

Applicant Details

First Name **Christopher**
 Last Name **Perkes**
 Citizenship Status **U. S. Citizen**
 Email Address christopher.perkes@temple.edu
 Address

Address
Street
711 W Montgomery Ave., Unit 1
City
Philadelphia
State/Territory
Pennsylvania
Zip
19122
Country
United States

Contact Phone Number **4356692934**

Applicant Education

BA/BS From **University of Utah**
 Date of BA/BS **August 2017**
 JD/LLB From **Temple University--James E. Beasley School of Law**
http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=23905&yr=2011
 Date of JD/LLB **May 20, 2021**
 Class Rank **Not yet ranked**
 Does the law school have a Law Review/Journal? **Yes**
 Law Review/Journal **No**
 Moot Court Experience **No**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	Yes
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Recommenders

Douglas, Erika
erika.douglas@temple.edu

Abel, Natasha
natasha.abel@eeoc.gov

Baron, Jane
jane.baron@temple.edu
215-204-8975

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Christopher Perkes
711 W. Montgomery Ave., Unit #1
Philadelphia, PA 19122
christopher.perkes@temple.edu
(435)-669-2934

September 2, 2020

The Honorable Elizabeth W. Hanes
United States District Court
Eastern District of Virginia
701 East Broad Street
Richmond, VA 23219

Dear Judge Hanes,

I am a third-year law student at Temple University Beasley School of Law and I am writing to apply for a 2021-2023 clerkship within your chambers. The writing sample included in my application materials is a memorandum of law written this summer during my time as a research assistant.

Throughout my law school career, I have focused on gaining a wide variety of litigation, transactional, and legal writing experiences. I have had the opportunity to grow my legal writing and research skills as a summer intern with the Department of Labor and judicial intern for an administrative law judge within the Equal Employment Opportunity Commission. Most recently, I have added to my writing skills as a research assistant for Professor Erika Douglas.

Also relevant to your consideration is my personal background within a judge's chambers. My mother has been employed in various roles within the Utah State Courts system for over 15 years. Through this connection, I have been exposed to the practical side of the judiciary and have seen the important part played by each member of a judge's chambers in ensuring the highest possible level of judicial service.

I am confident that my broad range of legal experiences will allow me to quickly contribute to the extensive research and writing support required of a law clerk as well as work effectively with each member of your judicial team. Perhaps most importantly, I am dedicated to beginning my legal career by gaining the unique insight offered to a clerk for a federal magistrate judge.

I am happy to any provide additional information upon request. Thank you for your consideration and I hope to hear from you soon.

Respectfully,

Christopher Perkes

Christopher Perkes

711 W. Montgomery Ave., Unit 1, Philadelphia, PA 19122
(435) 669-2934
christopher.perkes@temple.edu

EDUCATION

Temple University Beasley School of Law, Philadelphia, PA

Candidate for *Juris Doctor*, anticipated May 2021

Honors: Law Faculty Scholarship, 3.28 GPA, Dean's List Fall 2019

Activities: Integrated Transactional Program, 2019-2020

University of Utah, Salt Lake City, UT

Bachelor of Science in Marketing, August 2017

EXPERIENCE

Sidney L. Gold & Associates, Philadelphia, PA

August 2020-Present

Law Clerk

- Communicated with clients directly to gather facts in order to draft initial charges of discrimination and prepare for litigation and alternative dispute resolution
- Researched various employment focused topics and drafted memoranda and motions to be filed in state and federal court

Temple University Beasley School of Law, Philadelphia, PA

May 2020-Present

Research Assistant for Professor Erika Douglas

- Synthesized research on a variety of antitrust and intellectual property topics into memoranda
- Reviewed and edited text and citations of to-be-published academic articles

Equal Employment Opportunity Commission, Philadelphia, PA

Fall 2019

Federal Division Judicial Intern

- Synthesized research on variety of EEOC legal topics into memoranda for use by administrative law judge
- Reviewed case records and drafted decisions on motions for summary judgment

Department of Labor, Office of the Solicitor, Region III, Philadelphia, PA

Summer 2019

Summer Intern

- Drafted motion and supporting memoranda for civil contempt to be filed in federal court
- Drafted post-hearing brief for black-lung fund entitlement contest to be filed before ALJ
- Offered general litigation support including legal research, exhibit development, and deposition preparation

University of Utah Office of Admissions, Salt Lake City, UT

2017-2018

Marketing and Communications Coordinator

- Coordinated and designed multi-channel communication plans for academic colleges, university departments, and the University as a whole

INTERESTS

I enjoy playing and watching basketball, soccer, and tennis, photography, and traveling to new cities and national parks.

Christopher Perkes
Temple University--James E. Beasley School of Law
Cumulative GPA: 3.28

Fall 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Contracts	P. Bookman	B+	4	
Criminal Law	L. Natali	B	3	
Introduction to Transactional Skills	A. Mondoe		1	Pass/Fail
Legal Research and Writing	M. Levy	B	3	
Litigation Basics	K. Jacobsen		1	Pass/Fail
Torts	M. Rahdert	B	4	

Spring 2019

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Civil Procedure I	L. Ouziel	B	3	
Constitutional Law	H. Rishikoff	B+	4	
Intellectual Property	D. Harris	A-	3	
Legal Research and Writing	M. Levy	A-	2	
Property	J. Baron	B	4	

Fall 2019

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Copyrights	C. Speltzer	A-	3	
Evidence	L. Outziel	A	3	
Taxation	A. Monroe	B+	3	
Transactional Practice I	K. Dodson		2	Pass/Fail
Trusts and Estates	R. Bartow	B	3	
Dean's List				

Spring 2020

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Employment Discrimination	L. Halber		2	
Ethical Perspectives on Law	J. Baron		3	
Introduction to Trial Advocacy	D. Anhalt		3	
Patent Law	Erika Douglas		3	
Professional Responsibility	D. Lin		3	
Transactional Practice	W. Burnett		2	

Law School mandated pass/fail grading due to COVID-19 pandemic.

Grading System Description

Faculty are advised to use a target mean grade of 3.05 in all exam courses and in Legal Research and Writing, with a range of grades such that at least 20% of grades are A- or above and at least 20% of grades are C+ or below.

September 01, 2020

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige, Jr.
U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am writing this letter in enthusiastic support of Christopher Perkes's application for a clerkship within your chambers. Chris was a student in my Spring 2020 Patent Law course, and given his strong performance in the class, I also hired him as one of my research assistants for summer 2020.

I got to know Chris and his work well over the summer, as he was one of just two research assistants I chose to hire. I was consistently impressed by Chris's research and writing skills. In particular, one of his many standout projects was a 20 page research memorandum on the topic of monopolization claims related to exclusionary product redesign. Despite the advanced and complex topic, Chris's research was extensive and thoughtful, and turned up several cases that I used to revise my draft article. The nature of the research demanded that Chris think carefully about the cases and the judicial reasoning, as it was not necessarily evident from keyword searches whether a case would prove relevant or not. His memorandum was deeply considered, and showed strong grasp of how the cases related to each other.

It was evident from the quality of this memorandum and his other work products that Chris has past legal research and writing experience. He has worked on legal matters with both the Equal Opportunity Employment Commission and Office of the Solicitor for the Department of Labor. Over the past decade, I have worked with many summer students and junior associates at top law firms, and Chris's work products reflect thoughtfulness beyond his years in the law. I am confident that his demonstrated research and writing skills would make him an excellent clerk.

Chris also worked extensively on various other projects for me over the summer, such as specific research requests on antitrust, privacy and intellectual property law, and extensive cite checking of articles. I came to rely on and trust Chris because he was responsive, thoughtful and helpful, and because he consistently afforded the attention to detail necessary to complete legal writing at a high standard. Given that I was working remotely from California, Chris's strong communication skills, ownership of his work and responsiveness were very helpful in making our working relationship productive throughout the summer. In light of Chris's excellent work over the summer, I have asked him to continue as a research assistant during the current school year.

I also taught Chris in Patent Law, where he proved himself to be a well-prepared and engaged student. Our Patent Law class was unusual in that it had several students with advanced science degrees. This meant the discussion often got highly technical and granular. Despite this, Chris held his own in our discussions, learned the technical material quickly and contributed greatly to the learning of his peers. Chris also adapted well when we moved, on short notice, to remote teaching in response to the COVID-19. Chris continued to play an important role in the class discussion during our remote, online classes. At the end of the course, Chris wrote a carefully-analyzed and thoughtfully drafted final exam, which would have received a strong graded mark had Temple not implemented a mandatory pass/fail grading policy in response to the pandemic.

Chris's excellent legal research and writing abilities, his consistent attention to detail and professional approach to managing his work will no doubt make him an asset to your chambers. Having gotten to know Chris and his legal work well, I recommend him without reservation. I would be happy to discuss his candidacy further.

Sincerely,
Erika M. Douglas

Erika Douglas - erika.douglas@temple.edu



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Philadelphia District Office

801 Market Street, Suite 1300
Philadelphia, PA 19107-3127
Intake Information Group: (800) 669-4000
Intake Information Group TTY: (800) 669-6820
Philadelphia Status Line: (866) 408-8075
Philadelphia Direct Dial: (215) 440-2602
TTY (215) 440-2610
FAX (215) 440-2632, 2848 & 2604

Natasha L. Abel
Administrative Judge
natasha.abel@eeoc.gov

Direct Dial: (267) 589-9766
Facsimile: (215) 440-2847

December 3, 2019

Re: Letter of Recommendation for Christopher Perkes

To whom it may concern:

Through this letter, I would like to recommend Christopher Perkes who worked closely with me as a legal intern for several months. As an Administrative Judge with the U.S. Equal Employment Opportunity Commission, I carry a large case load of Complaints of employment discrimination filed by Federal employees against the Federal agency which they work or worked.

Federal Employment cases contain a very extensive Report of Investigation which includes interviews, key documents and employment policies. Some of these files are over 1,000 pages and contain numerous complicated legal issues. Chris was instrumental in writing Decisions on Motions for Summary Judgement. Chris was tasked with reviewing the Report of Investigation, along with the Motion for Summary Judgement, the Opposition and Reply. We discussed the facts as applied to the law to come to a decision which may have been to grant, deny, or partially grant the Motion. Then Chris wrote the Decision. Additionally, throughout his time, Chris provided legal research on unique employment law issues, and observed hearings.

So much of legal work is dependent upon strong writing skills and I can honestly say that, of all my interns over the years, Chris is by far the best legal writer. His writing consistently provided a clear, organized, and detailed analysis of the facts and the law that required very little, if any, editing before issuing. Chris was always prompt with his work, professional and conscientious. I found Chris to be personable, very bright, and a pleasure to work with.

It is my privilege to recommend Chris in his future endeavors and would welcome him back to our office at any time. Should you have any questions, or if I can provide further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, reading "N. Abel", is positioned below the word "Sincerely,".

Natasha L. Abel
EEOC Administrative Judge

September 01, 2020

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige, Jr.
U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I write to recommend Christopher (Chris) Perkes, who is applying for a clerkship to begin following his graduation from Temple University Beasley School of Law in May 2021. Chris is a strong student with excellent writing skills. I am pleased to recommend him highly.

Chris was a student in two of my classes. The first was Property, in the spring of 2019. Chris was quiet in this class at first, but as the semester went on, he spoke more frequently. I was impressed by the thoughtfulness of his questions and comments. He had clearly read the assigned materials, and listened to the class discussion, carefully and worked to make all the pieces fit together. He has a synthetic intelligence that is quite striking.

In the fall of 2019, Chris took my seminar, Ethical Perspectives on Law. This seminar uses literature to explore lawyers' accountability for the results they obtain. Students write five short papers in the course of the semester. Chris's papers were very good. He is an exceptionally careful reader who does not miss nuance. He is also a first-rate writer. I found his papers to be ambitious and well-argued.

Chris will be an excellent clerk. He is mature and responsible, and he thinks independently. He is a careful reader whom I suspect will do fine research.

Please contact me at 215-204-8975 or jane.baron@temple.edu if there is any further information I might provide.

Truly yours,

Jane B. Baron

Jane Baron - jane.baron@temple.edu - 215-204-8975

MEMORANDUM

TO: PROF. ERIKA DOUGLAS
 FROM: CHRISTOPHER PERKES
 DATE: JUNE 10, 2020
 RE: PREDATORY INNOVATION CLAIMS WITHIN CONTEMPORARY SOFTWARE AND TECHNOLOGY & TRINKO ADMONITION

I. QUESTION PRESENTED

A) How have courts analyzed predatory innovation claims within the technology and software sphere?

II. BRIEF ANSWER

A review of the applicable case law shows courts are far from in consensus on how to evaluate claims of anticompetitive product design changes. Further, courts have rarely been presented with facts sufficient to directly decide what sort of design changes give rise to antitrust liability, and reticent to create or abide by any one test or analysis when appropriate facts are presented. The result is a collection of fact specific legal standards and analyses which offer little guidance to dominant firms looking to compete through product design alterations. All but one court when faced with predatory innovation claims have analyzed the claims under an unarticulated, fact-specific analysis where the court considered the complete circumstances of the product design change to determine if it was anticompetitive.

III. CASE DISCUSSION

A. The outlier: Is there a valid argument that design change was innovative?

The sole explicitly tailored test asks whether there exists a valid argument that the product design change in question is a technical innovation that benefits consumers. The court in *ILC Peripherals Leasing Corp. v. Int'l Bus. Mach.'s, Corp.* ("Memorex") utilized this analysis when plaintiff proposed an alternative product design that defendant should have used instead in order

to avoid the alleged anticompetitive harm to plaintiff. 458 F.Supp. 423, 438-41 (N.D. Cal. 1978), *aff'd*, 636 F.2d 1188 (9th Cir. 1980) (affirmed without analysis). Plaintiffs alleged that the design changes made to ports and connectors that IBM implemented in their CPU products were anticompetitive under § 2 of the Sherman Act because plaintiff was unable to quickly develop and sell products compatible with the new designs. *Id.*

The court rejected the argument by plaintiffs that the mere existence of a possible alternative design proved that the design change was made purely to hurt competition. *Id.* Instead, the court held that “[w]here the approach chosen was at least as justifiable as the alternative. . . courts should not get involved in second guessing engineers.” *Id.* at 440-44 (citing *Response of Carolina, Inc. v. Leasco Response, Inc.*, 537 F.2d 1307, 1330 (5th Cir. 1976)). Similarly, the court found that “[w]here there is a difference of opinion as to the advantages of two alternatives which can both be defended from an engineering standpoint, the court will not allow itself to be enmeshed ‘in a technical inquiry into the justifiability of product innovations.’” *Id.* at 439 (quoting *Response of Carolina, Inc.*, 537 F.2d at 1330). The court found that because such a dispute between alternative product designs existed whether the design was an innovation it would not second-guess the design used by IBM. *Id.* at 440-41. Accordingly, the court granted IBM’s motion for directed verdict against plaintiff’s concerning its claim of anticompetitive design change. *Id.* at 443-44.

One year later, the Northern District of California was again asked to consider changes made by IBM to its products and the effect the changes had on competitors. The Court in *In re IBM Peripheral EDP Devices Antitrust Litigation* (“Transamerica”), discussed further below, rejected the more deferential analysis utilized by his colleague. 481 F.Supp. 965, 1003 (N.D. Cal. 1979). In so doing, the Court found the analysis unduly “overprotective” of computer innovation,

further stating that such an inquiry “ignores the possibility that a superior product might be used as a vehicle for tying sales of other products, and would pronounce products superior” despite evidence to the contrary. *Id.*

B. Does the product design change “unreasonably restrict competition”?

Design changes implemented by IBM were again probed by the Northern District of California for anticompetitive violations one year later. *Transamerica*, 481 F.Supp. at 965, *aff’d*, 698 F.2d 1377 (9th Cir. 1983). As in *Memorex*, the plaintiffs in *Transamerica* alleged that changes IBM made to interfaces on computing products were illegally anticompetitive under § 2 of the Sherman Act. *Id.* at 1003-8. In its analysis, the Court first reviewed the contemporary body of antitrust law concerning predatory innovation. *Id.* at 1002-3. After discussing possible scenarios where a monopolistic organization *could* use the design of its product in an illegally anticompetitive fashion, the Court concluded that “[it] is more difficult to formulate a legal standard for design conduct” for determining when conduct is in fact illegal. *Id.* It then rejected the suggestion by its Northern District colleague that “when there is a valid engineering dispute over a product’s superiority the inquiry should end; the product is innovative and the design is legal” as impermissibly overprotective and stifling of creativity within the computing field. *Id.* It similarly rejected the call to examine the designer’s intent as that approach would unduly punish in scenarios when intention is mixed. *Id.* at 1003. Further, the Court found such an analysis would be impracticable because of the difficulty in determining corporate intent. *Id.* Instead, the Court determined that the analysis to be applied should be whether “the design choice is unreasonably restrictive of competition[.]” *Id.*

To apply this analysis, the Court first turned to IBM’s choice to implement the “Mallard” design plan for new CPUs. *Id.* at 1004-5. The Mallard plan involved removing connection ports

of certain CPU products while rearranging other electronic elements into the space left by the removed ports. *Id.* The Court found that the Mallard plan was implemented over the alternative “Apricot” plan because Apricot would use a connection interface well known to, and utilized by, peripheral manufacturing competition. *Id.* Competing peripheral products compatible to the Mallard designed products would be significantly delayed or not introduced at all due to the difficulty of copying the new designs in time to supply customers. *Id.* at 1005. The Court’s finding that IBM intended to effect competition with the design change, however, was not dispositive. *Id.* Because of the Mallard’s superior design and negligible actual effect on competition, the Court held that “a finding adverse to IBM on this aspect of its conduct would amount to a punishment for intent alone.” *Id.* Accordingly, the Court found that the design change did not unreasonably restrict competition, and therefore, under its chosen test did not violate the Sherman Act. *Id.*

Next, the court analyzed other design changes. *Id.* at 1007-8. In its updated design for another family of CPUs, IBM removed an interface that would only serve to allow consumers to connect competing peripheral products to the respective CPUs. *Id.* at 1007. IBM had included an alternative superior and natively attached interface to the redesigned CPU that rendered the removed interface obsolete. *Id.* Because this change did not harm consumers and lowered development time and costs, the Court found that this specific design change did not unreasonably restrict competition. *Id.*

In contrast, however, the Court found another design change made to the same family of CPUs by IBM to be violative of the Sherman Act if IBM had monopoly power. *Id.* at 1008. In this redesign, IBM included another interface that allowed devices which transferred data at a slower speed than the primary interface to be used. *Id.* at 1007. The original design was to

include an interface that operated at a data transfer speed of 50kb per second. *Id.* Notably however, that speed was sufficient for competing peripherals to be used with the new CPUs. *Id.* To avoid this competition, IBM redesigned the interface to operate at 29kb instead, rendering the alternative products incompatible. *Id.* This change not only barred consumers from using competing peripheral products but also reduced the overall system performance of the CPU. *Id.* The court found this change to be unreasonably restrictive of competition and stated that the “law need not tolerate deliberate acts where the only purpose and effect is to use monopoly power to gain a competitive advantage.” *Id.* at 1007-8.

The court in *Caldera, Inc. v. Microsoft Corp.*, cited the *Transamerica* analysis when asked to evaluate software product changes made by Microsoft. 72 F.Supp. 2d 1295, 1313 (D. Utah 1999). In *Caldera*, plaintiff raised a laundry list of antitrust claims against Microsoft for its conduct discouraging manufacturers and consumers from purchasing plaintiff’s computer operating system. *Id.* at 1297-1305. Starting in the early 1980’s, plaintiff developed a series of operating systems for use on consumer and organizational computer systems. *Id.* The operating system, similar to the popular Microsoft developed MS-DOS, allowed users to run programs like word-processors and games as well as utilize a visual based graphical user interfaces (GUIs) to navigate files and programs without extensive coding knowledge. *Id.* at 1298. Microsoft’s GUI product, Windows, was introduced in 1985 and held a monopoly position in the GUI market from its inception until the time of the case. *Id.* Despite Microsoft’s dominant market position in both the operating system and GUI markets, plaintiff continued its development of its own operating system line, DR DOS. *Id.* DR DOS 5.0, released by plaintiff in 1990, received significant praise from individuals in the industry, alarming Microsoft. *Id.* This alarm led to a collection of allegedly anticompetitive activity by Microsoft to limit the market success of DR

DOS 5.0 and later versions of the operating system. *Id.* at 1298-1305. These anticompetitive activities included a series of design changes and alterations to Microsoft software that limited the interoperability between those products and the DR DOS operating system. *Id.* at 1302-5. These design changes included error messages which displayed on users' screens when they attempted to utilize Microsoft software with DR DOS as well as simply ignoring fixable coding problems which caused Microsoft products to malfunction when used in conjunction with DR DOS. *Id.* To support these claims, plaintiffs pointed to a plethora of internal and external communications from Microsoft executives explicitly or implicitly acknowledging the goal of the design changes was to limit DR DOS' market position. *Id.*

In its analysis, the Court looked to the decision in *Transamerica*. *Id.* at 1312. The reasoning in that case, the Court states, focuses on what effect the allegedly anticompetitive design change has on competition and "does not impose the much heavier burden on a plaintiff of demonstrating that a design choice is entirely devoid of technological merit." *Id.* at 1313. Instead, the Court found, because of the interconnectedness between the design changes and other conduct by Microsoft, the changes should not be viewed in "isolation and out of the context in which they occurred." *Id.* With that in consideration, the Court found that Microsoft introduced the incompatibilities as part of a complete scheme of anticompetitive conduct. *Id.* at 1314. Accordingly, the court found that plaintiff had provided sufficient evidence to defeat Microsoft's motion for partial summary judgment. *Id.*

C. Unlabeled analyses: Was the design change made for a valid business justification?

[OMMITTED FOR BREVITY]

IV. ANALYSIS

A review of the relevant case law leaves the reader little closer to an understanding of when a design change would rise to the level of “predatory innovation.” Courts are often conclusory or circular in their reasoning while evaluating claims of predatory innovation, never directly analyzing whether the product design change in question is in fact anticompetitive. *See HDC Med., Inc.*, 474 F.3d at 550; *In re Keurig Green Mountain Single-Serve Coffee Antitrust Litigation*, 383 F.Supp 3d at 230-31. Instead, courts frequently assume the design change was predatory without analysis, then move to analyzing whether the change was made for an appropriate business reason. *Id.* Even courts of appeal have spent little ink on how a court should analyze predatory innovation claims. *See Northeastern Tel. Co.*, 651 F.2d at 94-95; *Memorex*, 636 F.2d at 1188. This opaque decision making leaves little guidance as to what sort of product design changes in technology or software might give rise to antitrust liability in the future.

The sole, predatory innovations specific test, was created and used solely in *Memorex*. 458 F.Supp. 423, 438-41. Following the *Transamerica* court’s rejection of the *Memorex* test, my research does not provide additional consideration of the “difference of opinion” analysis. *See* 481 F.Supp. at 965. Notably, the Ninth Circuit affirmed the district court’s findings without discussion of the test used. *Memorex*, 636 F.2d at 1188. As such, the appropriateness of the *Memorex* test is still an open question within Ninth Circuit jurisprudence. Further confusion was sowed when the Ninth Circuit also upheld the reasoning used by the *Transamerica* court, which directly rejected the earlier *Memorex* test. 698 F.2d 1377 (9th Cir. 1983).

The limited reasoning that has been provided by the courts not following the *Memorex* or *Transamerica* type analyses includes a variety of permissible justifications for possibly anticompetitive design changes. Accepted justifications include: increasing patient safety and

complying with governmental regulations; evidence that new design was technologically superior and had limited effect on competition; new design lowered product development cost and time; product design lowered manufacturing costs and increased product performance; and, evidence that design change was enacted to promote the firm's valid competition in the online advertisement market. *See HDC Med., Inc.*, 474 F.3d at 550; *Transamerica*, 481 F.Supp. at 1005, 1007-8; *CalComp*, 613 F.2d at 731-32; *MySpace*, 2007 U.S. Dist. LEXIS 43739 at *33-34.

Alternatively, Courts have primarily ruled against product design changes that have little consumer benefit and were part of an overall scheme of anticompetitive behavior. *Transamerica*, 481 F.Supp. at 1007-8. Explicit anticompetitive intent, while not dispositive, has been held to be an element weighed against an alleged violator. *Id.*; *Caldera*, 72 F.Supp. 2d at 1302-5.

Secondary sources, including practitioner handbooks and law review articles, give little additional guidance in how to navigate this undecided area of law. *See* 1 WILLIAM C. HOLMES, INTELLECTUAL PROPERTY AND ANTITRUST LAW § 11.5 (March 2020 update); 2 JULIAN O. VON KALINOWSKY ET AL., ANTITRUST LAWS AND TRADE REGULATION § 27.06 (Matthew Bender & Co., Inc., 2d ed. 2020); Jonathon Jacobson et al., *Predatory Innovation: An Analysis of Allied Orthopedic v. Tyco In the Context of Section 2 Jurisprudence*, 23 Loy. Consumer L. Rev. 1 (2010). Scholarship in the area has focused primarily on discussion of what sort of analysis a court *should* use to determine whether a product change is anticompetitive, instead of analyses courts *have* used to do so. *See, e.g.*, Suzanne Van Arsdale & Cody Venzke, *Predatory Innovation in Software Markets*, 29 Harv. J.L. & Tech. 243 (2015); Alan Devlin & Michael Jacobs, *Anticompetitive Innovation and the Quality of Invention*, 27 Berkeley Tech. L.J. 1 (2012); Joseph Gregory Sidak, *Debunking Predatory Innovation*, 83 Colum. L. Rev. 1121 (1983). The suggested analyses proffered by the respective authors rely significantly on theories and principles from the

field of economics to answer how courts should evaluate predatory innovation claims in order to appropriately encourage legitimate innovation. *See* Joseph Gregory Sidak, *Debunking Predatory Innovation*, 83 Colum. L. Rev. 1121 (1983). Even when authors dig into relevant case law, analysis is mostly limited to cursory overviews such as provided here. Josh Baskin, Note, *Note: Competitive Regulation of Mobile Software Systems: Promoting Innovation Through Reform of Antitrust and Patent Laws*, 64 Hastings L.J. 1727 (2013).

Applicant Details

First Name **Christopher**
 Last Name **Perkes**
 Citizenship Status **U. S. Citizen**
 Email Address christopher.perkes@temple.edu
 Address

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Zip
19122
Country
United States

Contact Phone Number **4356692934**

Applicant Education

BA/BS From **University of Utah**
 Date of BA/BS **August 2017**
 JD/LLB From **Temple University--James E. Beasley School of Law**
http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=23905&yr=2011
 Date of JD/LLB **May 20, 2021**
 Class Rank **Not yet ranked**
 Does the law school have a Law Review/Journal? **Yes**
 Law Review/Journal **No**
 Moot Court Experience **No**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	Yes
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

References

The Honorable Stephen M. Higgins – Judge – Monroe County Court of Common Pleas
570-517-3078

Erika Douglas – Assistant Professor of Law – Temple University Beasley School of Law
erika.douglas@temple.edu
215-204-0804

Natasha Abel - Administrative Law Judge
natasha.abel@eeoc.gov
267-589-9766

Traci Greenberg – Associate – Sidney L. Gold & Associates P.C.
Tgreenberg@discrimlaw.net
215-569-1999

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Christopher Perkes
43 Miller St., Apt. A
Phillipsburg, NJ 08865
christopher.perkes@temple.edu
(435)-669-2934

April 7, 2022

The Honorable Elizabeth W. Hanes
701 East Broad St.
Richmond, VA 23219

Dear Judge Hanes,

I am writing to express my interest in a law clerk position within your chambers for the 2022-2023 term. I believe that my variety of professional and academic experiences provide the appropriate foundation to quickly take upon to the extensive legal research and writing responsibilities of a law clerk while working effectively with each member of your judicial team.

At my current position, my responsibilities include general legal research as well as independently drafting opinions and orders concerning all types of pre-trial, trial, and post-trial criminal law issues. Common assignments include drafting decisions concerning writs of *habeas corpus*, motions to suppress evidence, and preparing research memos on uncommon areas of law.

Throughout my law school career, I also had the opportunity to gain practical and academic experience in diverse areas of substantive law and legal writing generally. I have a particular interest in the area of intellectual property, including patent and copyright law. As part of my work as a research assistant for Professor Erika Douglas, I performed research on contemporary intellectual property, antitrust, and technology law topics. I also had gained valuable practical experience in the area of employment law and civil litigation generally as a summer intern for the Department of Labor, intern for the Equal Employment Opportunity Commission, and part time law clerk for a small employment discrimination plaintiffs' firm.

I believe that my combination of academic and professional experiences would make me a valuable addition to your team and am excited by the prospect of working on the sort of complex civil and criminal cases commonly brought in the Eastern District of Virginia.

I am happy to any provide additional information upon request. Thank you for your consideration and I hope to hear from you soon.

Respectfully,

Christopher Perkes

Christopher Perkes

43 Miller St., Apt A, Phillipsburg, NJ 08865 | (435) 669-2934 | christopher.perkes@temple.edu

EDUCATION

Temple University Beasley School of Law, Philadelphia, PA

Juris Doctor, May 2021

- Honors: *cum laude*; Member, Rubin Public Interest Law Honor Society

University of Utah, Salt Lake City, UT

Bachelor of Science in Marketing, August 2017

Bar Admissions

New Jersey, awaiting results – February 2022 bar examination

EXPERIENCE

Monroe County Court of Common Pleas, Stroudsburg, PA

Law Clerk to the Honorable Stephen M. Higgins | August 2021-Present

- Drafts orders and opinions
- Provides research assistance on pre-trial, trial, and post-trial criminal law issues

Sidney L. Gold & Associates, Philadelphia, PA

Law Clerk | August 2020-April 2021

- Communicated with clients directly to draft initial charges of discrimination
- Drafted legal memoranda and motions to be filed in state and federal court

Temple University Beasley School of Law, Philadelphia, PA

Research Assistant for Professor Erika Douglas | May 2020-March 2021

- Synthesized research on antitrust, intellectual property, and privacy topics into memoranda
- Reviewed and edited text and citations of to-be-published academic publications

Equal Employment Opportunity Commission, Philadelphia, PA

Federal Division Judicial Intern | Fall 2019

- Synthesized research on EEOC legal topics into memoranda for use by administrative law judge
- Reviewed case records and drafted decisions on motions for summary judgment

Department of Labor, Office of the Solicitor, Region III, Philadelphia, PA

Summer Intern | Summer 2019

- Drafted motions and offered general litigation support

University of Utah Office of Admissions, Salt Lake City, UT

Marketing and Communications Coordinator | 2017-2018

- Coordinated and designed multi-channel communication plans for University units

INTERESTS

I enjoy playing and watching basketball, soccer, and tennis, photography, traveling and the outdoors

T E M P L E U N I V E R S I T Y

1801 North Broad Street



Philadelphia, PA 19122

Page: 1

Academic Record of: Christopher Lynn Perkes

Current Name: Christopher Lynn Perkes

Date Issued: 01-JUL-2021

Date of Birth (MM/DD): 09/01

Student ID: 915694736

Level: Law

Issued To: Christopher

Parchment DocumentID: 35094000

Course Level: Law	SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
Current Program	Institution Information continued:			
Juris Doctor	JUDO 0547	Intro Intellctl Property	3.00 A-	11.01
Major : Law--Full Time	Harris, D			
	Ehrs: 16.00 GPA-Hrs: 16.00 QPts:	52.67 GPA:	3.29	
Degrees Awarded Juris Doctor 20-MAY-2021				
Primary Degree	2019 Fall			
Major : Law--Full Time	Semester Notations:			
Inst. Honors: Cum Laude	DCP (Taxation)			
	DCP (Trusts & Estates)			
	Law--Full Time			
SUBJ NO.	COURSE TITLE	CRED GRD	PTS R	
INSTITUTION CREDIT:				
2018 Fall				
Law--Full Time				
JUDO 0401	Litigation Basics	1.00 S	0.00	
Jacobsen, K				
JUDO 0406	Contracts	4.00 B+	13.32	
Bookman, P				
JUDO 0410	Criminal Law I	3.00 B	9.00	
Natali, L				
JUDO 0414	Legal Research & Writing	3.00 B	9.00	
Levy, M				
JUDO 0420	Torts	4.00 B	12.00	
Rahdert, M				
JUDO 0437	Intro to Transactional Skills	1.00 S	0.00	
Monroe, A				
Ehrs: 16.00 GPA-Hrs: 14.00 QPts:	43.32 GPA:	3.09		
2019 Spring				
Law--Full Time				
JUDO 0402	Civil Procedure I	3.00 B	9.00	
Ouziel, L				
JUDO 0404	Constitutional Law	4.00 B+	13.32	
Rishikof, H				
JUDO 0414	Legal Research & Writing	2.00 A-	7.34	
Levy, M				
JUDO 0418	Property	4.00 B	12.00	
Baron, J				
***** CONTINUED ON NEXT COLUMN *****				
2019 Fall				
Semester Notations:				
DCP (Taxation)				
DCP (Trusts & Estates)				
Law--Full Time				
JUDO 0462	Transactional Practice I	2.00 S+	0.00	
Dodson, K				
JUDO 0540	Evidence	3.00 A	12.00	
Ouziel, L				
JUDO 0553	Copyrights	2.00 A-	7.34	
Spletzer, C				
JUDO 0600	Taxation	3.00 B+	9.99	
Monroe, A				
JUDO 0602	Trusts & Estates	3.00 B	9.00	
Bartow, R				
Ehrs: 13.00 GPA-Hrs: 11.00 QPts:	38.33 GPA:	3.48		
Dean's List				
2020 Spring				
Semester Notations:				
DCP (Professional Responsibility)				
Law--Full Time				
JUDO 0416	Professional Responsibility	3.00 CR	0.00	
Lin, D				
JUDO 0463	Transactional Practice II	2.00 CR	0.00	
Burnett, W				
JUDO 0537	Employment Discrimination	2.00 CR	0.00	
Halber, L				
JUDO 0552	Patent Law	3.00 CR	0.00	
Douglas, E				
***** CONTINUED ON PAGE 2 *****				

Official Electronic_35094000

In accordance with USC 438 (b) (4) (8) (The Family Educational Rights and Privacy Act of 1974), you are hereby notified that this information is provided upon the condition that you, your agents or employees will not permit any other party access to this record without consent of the student. Alteration of this transcript may be a criminal offense.



TEMPLE UNIVERSITY

1801 North Broad Street Philadelphia, PA 19122

Page: 2

Academic Record of: Christopher Lynn Perkes
Current Name: Christopher Lynn Perkes

Date Issued: 01-JUL-2021
Date of Birth (MM/DD): 09/01
Student ID: 915634736
Level: Law

SUBJ NO.	COURSE TITLE	CRED	GRD	PTS	R	***** TRANSCRIPT TOTALS *****				
						Earned Hrs	GPA Hrs	Points	GPA	
Institution Information continued:						TOTAL INSTITUTION				
JUDO 0558	Intro to Trial Advocacy	3.00	CR	0.00		88.00	68.00	229.36	3.37	
Anhalt, D										
JUDO 1048	Ethical Perspectives on Law	3.00	CR	0.00		TOTAL TRANSFER				
Baron, J						0.00	0.00	0.00	0.00	
Ehrs: 16.00 GPA-Hrs: 0.00 QPts: 0.00 GPA: 0.00						OVERALL	88.00	68.00	229.36 3.37	
						***** END OF TRANSCRIPT *****				

2020 Fall

Semester Notations:

DCP (International Law)

Law--Full Time

JUDO 0508	Corporations	3.00 A-	11.01
Lin, C			
JUDO 0515	Media & Telecommunications Law	3.00 A	12.00
Rishikof, H			
JUDO 0556	International Law	3.00 B	9.00
Dunoff, J			
JUDO 0625	Employment Law	3.00 B-	8.01
Rogers, N			
JUDO 1081	Innovation Law and Policy	3.00 A	12.00
Wambach, D			
Ehrs: 15.00 GPA-Hrs: 15.00 QPts: 52.02 GPA: 3.47			

Dean's List

2021 Spring

Law--Full Time

JUDO 0532	Criminal Procedure I	3.00 A-	11.01
Ouziel, L			
JUDO 1015	LRW III Civil Motions Practice	3.00 B+	9.99
Margolis, E			
JUDO 1042	LRW III: Experts in Civil Lit	3.00 A-	11.01
Kolb, R			
JUDO 1102	Intl Literary Perspectives	3.00 A-	11.01
McCarthy, F			
Ehrs: 12.00 GPA-Hrs: 12.00 QPts: 43.02 GPA: 3.59			

***** CONTINUED ON NEXT COLUMN *****

Official Electronic_35094000

In accordance with USC 438 (6) (4) (6) (The Family Educational Rights and Privacy Act of 1974), you are hereby notified that this information is provided upon the condition that you, your agents or employees will not permit any other party access to this record without consent of the student. Alteration of this transcript may be a criminal offense.



**COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA,	: 2644 CR 2019
vs.	:
DANIEL J. CARNEY	: Motion to Dismiss
DEFENDANT	: With Prejudice
	: Pursuant to Rule
	: 600

OPINION

Daniel J. Carney (“Defendant”) has filed a Motion to Dismiss with Prejudice Pursuant to Pa. R. Crim. P. 600. (“Rule 600”) Defendant is charged with Attempted Rape of an Unconscious Person along with other related sexual and assault offenses.¹ Defendant argues that he is entitled to the dismissal of the charges levied against him because trial has not commenced within the time period required by Rule 600. For the reasons described below, we find that Defendant is not entitled to dismissal of the charges and will deny his motion.

Factual and Procedural History

The underlying events which support the charges are alleged to have occurred on or about August 30, 2019. After an investigation, the Commonwealth filed its criminal complaint against Defendant on October 3, 2019. Arraignment

¹ Defendant faces charges of 1) Criminal Attempt – Rape Unconscious Victim (F1), 18 Pa.C.S.A. § 901; 2) Criminal Attempt – Sexual Assault (F2), 18 Pa.C.S.A. § 901; 3) Aggravated Indecent Assault – Without Consent (F2), 18 Pa.C.S.A. § 3125(a)(1); 4) Simple Assault (M2), 18 Pa.C.S.A. § 2701; and 5) Indecent Assault – Without Consent (M2), 18 Pa.C.S.A. § 3126(a)(1).

occurred on November 11, 2019 after which Defendant filed his Omnibus Motion on January 9, 2020. A hearing on that motion was held on February 18, 2020. The Court directed the parties to file briefs on the matter within 30 days of receipt of the transcript of the February 18, 2020 hearing. The transcript was completed on March 2, 2020 so briefs on Defendant's Omnibus Motion were initially due on April 1, 2020. However, the Court granted the Commonwealth's March 18, 2020 motion to extend the deadline for filing briefs until April 20, 2020.

Notably, on March 16, 2020, the Pennsylvania Supreme Court issued an order declaring a general, statewide judicial emergency due to the emergence of the Covid-19 pandemic. *In re General Statewide Judicial Emergency*, 228 A.3d 1281 (Pa. 2020). The order provides that the president judges of the various judicial districts "SHALL HAVE THE AUTHORITY to suspend the operation of Rule of Criminal Procedure 600 within a judicial district." *Id.* (capitalization in original). The Supreme Court further explained that "[t]he purport of the suspension will be that the time period of the local judicial emergency. . . shall be excluded from the time computation under Rule of Criminal Procedure 600(c)." *Id.*

That same day, on March 16, 2020, President Judge Patti-Worthington declared a judicial emergency until April 14, 2020 pursuant to the Supreme Court's order. In her order Judge Patti-Worthington declared that "[t]he operation of Rule of Criminal Procedure 600 shall be suspended in the 43rd District during the period of the local judicial emergency." *In re 43rd Judicial District Declaration of Judicial Emergency*, No. ____ M 2020 (Mar. 16, 2020).

On April 1, 2020, the Supreme Court issued its second supplemental order to the March 16, 2020 declaration of judicial emergency. *In re General Statewide Judicial Emergency*, 229 A.3d 229 (Pa. 2020). In that order, it extended the deadline of all filings due between March 19, 2020 and April 30, 2020, until May 1, 2020. *Id.* Defendant timely filed his Brief in Support of Defendant’s Omnibus Motion on April 20, 2020, but the Commonwealth did not file its brief against the motion.

President Judge Patti-Worthington extended the March 16, 2020 Declaration of Judicial Emergency (“DJE”) in a number of subsequent orders. The April 1, 2020 order extended the suspension of Rule 600 to April 30, 2020. *In re 43rd Judicial District Emergency Administrative Order Covid-19*, No. 73 AD 2020. Then, on April 22, 2020, President Judge Patti-Worthington further extended the suspension until May 31. *In re 43rd Judicial District Emergency Administrative Order Covid-19*, No. 76 AD 2020. Regarding Rule 600, the April 22, 2020 order stated:

Any postponement caused by this Judicial Emergency shall be considered a Court postponement and shall constitute excludable time for purposes of the application of Pennsylvania Rule of Criminal Procedure 600.

Id. (citations omitted). The March 16, 2020 DJE was further extended to September 7, 2020, through a May 29, 2020 order. *In re 43rd Judicial District Emergency Administrative Order Covid-19*, No. 83 AD 2020. That order provides that “Pennsylvania Rule of Criminal Procedure 600 is suspended subject to constitutional requirements.” *Id.* A subsequent order on September 2, 2020 extended the March 16, 2020 DJE until January 4, 2021. *In re 43rd Judicial*

District Emergency Administrative Order Covid-19, No. 89 AD 2020. The final extension of the suspension of Rule 600 was enacted by the December 3, 2020 order. In re 43rd Judicial District Emergency Administrative Order Covid-19, No. 92 AD 2020. That order extended the March 16, 2020 DJE until June 30, 2021.

Id. Concerning Rule 600 it stated that:

Pennsylvania Rule of Criminal Procedure is SUSPENDED subject to Constitutional limitations. Any postponement caused by this Judicial Emergency shall be considered a Court postponement and shall constitute excludable time for purposes of the application of Pennsylvania Rule of Criminal Procedure 600.

Id. (capitalization in original).

On July 21, 2020, Defendant filed a supplemental habeas motion in response to the Pennsylvania Supreme Court's decision in Commonwealth v. McClelland. The Court ordered a hearing on Defendant's motion on September 25, 2020, but the Commonwealth requested a continuance of that hearing on September 23, 2020. Over the Defendant's objection, the Court granted that motion and scheduled a new hearing on October 30, 2020. Following the October 30, 2020 hearing, the Court ordered that briefs be filed within 30 days of the hearing transcript being filed. The transcript was filed on November, 19, 2020 and both the Defendant and the Commonwealth timely filed their briefs within 30 days. On March 26, 2021, the Court entered its order denying the Defendant's motion and scheduled the case for pre-trial conference on August 18, 2021. The Defendant filed the instant motion on August 13, 2021.

Discussion

Section (A)(2)(a) of the current version of Rule 600, in effect since 2013, states that:

Trial in a court case in which a written complaint is filed against the defendant shall commence within 365 days from the date on which the complaint is filed.

Pa. R. Crim. P. 600. Section (C)(1) adds that:

For purposes of Paragraph (A), periods of delay at any stage of the proceedings caused by the Commonwealth when the Commonwealth has failed to exercise due diligence shall be included in the computation of the time within which trial must commence. Any other periods of delay shall be excluded from the computation.

Id.

When deciding a Rule 600 motion to dismiss, we must first determine the “mechanical run date” 365 days from when the criminal complaint was filed - that is, the date by which a defendant must be brought to trial. Commonwealth v. Bethea, 185 A.3d 364, 371 (Pa. Super. Ct. 2018). Then, we must determine whether any periods of delay in bringing the defendant to trial are “excludable.” Id. Excludable periods of delay include any periods of time expressly waived by the defendant, delay resulting from the unavailability of the defendant or the defendant’s attorney, and any continuance at the request of the defendant or the defendant’s attorney. Commonwealth v. Hunt, 858 A.2d 1234, 1241 (Pa. Super. Ct. 2004). Any amount of excludable delay is then added to the original mechanical run date to determine the “adjusted run date.” Bethea, 185 A.3d at 371.

If trial did not occur before that adjusted run date we must determine whether the additional period of delay was “excusable.” Hunt, 858 A.2d at 1241. “Excusable” delay, in contrast to “excludable” delay, are periods of delay caused by forces outside the control of the Commonwealth and not the result of the Commonwealth’s lack of due diligence. Id.

The Pennsylvania Supreme Court recently clarified in Harth v. Commonwealth, 252 A.3d 600 (Pa. 2021), how and when a court must consider the Commonwealth’s due diligence when computing the date by which a defendant must be brought to trial. In Harth, the trial court found that when it postponed trial for several weeks because the initial trial date was during the Pope’s visit to Philadelphia, that period of time should be considered judicial delay and excludable time for purposes of the Rule 600 calculation. Id. at 603-4. The defendant disagreed and argued that the time period should not be excluded because the Commonwealth had failed to provide all relevant discovery to the defendant in order to be adequately prepared for trial on the initial scheduled date and therefore did not exercise due diligence in bringing the case to trial. Id. at 606-6. The Supreme Court ultimately held that “a trial court may invoke “judicial delay” in order to deny a defendant’s Rule 600 motion to dismiss only after the Commonwealth has demonstrated that it complied with the due diligence requirements of Rule 600 at all relevant periods[.]” Id. at 603.

Here, the initial “mechanical run date” for Defendant was October 2, 2020, 365 days from when the criminal complaint was filed on October 3, 2019.

Excludable periods of delay include delay caused by Defendant filing motions.

The following period of delay attributable to the Defendant is excludable:

Time Period	Days Excluded from Rule 600 Calculation
1/09/20 Defendant's Omnibus Motion Filed – 3/16/20 Suspension of Rule 600 by Declaration of Judicial Emergency	67
<u>Total</u>	<u>67</u>

Rule 600 was suspended from March 16, 2020 until June 30, 2021, a total of 471 days. That lengthy period is excludable as judicial delay under the calculation of Rule 600. It is unclear, however, how closely the pandemic related Rule 600 suspensions compare to the periods of judicial delay considered in *Harth* and how the Commonwealth's duty to exercise due diligence in bringing defendants to trial might be affected. The unprecedented challenges created by pandemic restrictions and closures support finding that the period of Rule 600 suspension instituted by the DJE was an extraordinary period of judicial delay and that the Commonwealth need not meet the normal threshold of exercising due diligence in order for that period to be excluded from the Rule 600 calculation. That being said, however low the bar might have been during the period Rule 600 was suspended, in this case the Commonwealth clearly failed to satisfy the requirement to exercise due diligence by failing to file a timely brief in response to Defendant's January 9, 2020 Omnibus Motion. Any delay caused by that unexcused failure shall be charged to the Commonwealth and included in the Rule 600 calculation.

The Defendant argues that that period of delay lasted from May 1, 2020, the extended due date for filing the brief as ordered by our Supreme Court, until the Commonwealth filed its Brief in Opposition to Omnibus on December 15, 2020. We do not agree. By filing his Supplemental Habeas Motion on July 21, 2020, the Defendant created a new period of time in the progression of this case wherein a trial, regardless of the Commonwealth's due diligence, could not commence. The Court had to determine before the case could progress to trial whether Defendant was entitled to dismissal of the charges against him because the Commonwealth relied on hearsay evidence to establish its *prima facie* case in violation of the Supreme Court's decision in Commonwealth v. McClelland. The Commonwealth exercised due diligence by timely filing their brief in opposition to Defendant's Supplemental Habeas Motion. Any delay caused following Defendant's filing of that motion, absent specific evidence to the contrary, cannot be fairly attributed to the Commonwealth. The Defendant has not provided such evidence.

Accordingly, the Court finds that the following period of time is not excludable and must be included in our Rule 600 calculation:

Time Period	Days Included in Rule 600 Calculation
5/1/20 Deadline for Commonwealth to File Brief on Defendant's Omnibus Motion – 7/21/2020 Defendant's Supplemental Habeas Motion Filed	48
<u>Total</u>	<u>48</u>

The Defendant further argues that because other trials occurred during the period when Rule 600 was suspended the Commonwealth failed to exercise due diligence *during the entire period* by not bringing the Defendant to trial sooner. This argument is unpersuasive. The mere fact that other cases were being tried does nothing to prove that the Commonwealth failed to act diligently by not bringing *this Defendant* to trial. The ability to try cases during the period when Rule 600 was suspended was not unlimited due to practical health and safety concerns. There were also periods of time when trials were suspended entirely. The Defendant has failed to provide any evidence why the Commonwealth should have prioritized his case over others, or that their selection of which cases to bring to trial was a failure to exercise due diligence.

Finally, the Defendant argues that the Court's September 25, 2020 order granting the Commonwealth's motion to continue the Omnibus Pre-Trial Motion Hearing, belies the notion that the entire period between March 16, 2020 and June 30, 2021 was excludable judicial delay because that order noted that "Rule 600 to run against the Commonwealth" due to its request for the continuance. This argument is also unpersuasive. There was, and continues to be, considerable uncertainty concerning what effect the pandemic would have on court proceedings. It was possible that the Rule 600 suspension would be lifted at any time and good practice encouraged the Court to indicate to which party the delay should be attributed to in order to ease future Rule 600 analysis. That simple note does not extinguish the power given to the President Judge to suspend Rule 600

nor prove that the entire period that Rule 600 was suspended was not excludable from Rule 600 calculations as judicial delay.

Therefore, the remaining 423 days of time when Rule 600 was suspended are properly considered as time excluded from the Rule 600 calculation. By adding the two periods of excludable delay calculated above to the original mechanical run date, we find that the “adjusted run date” to be February 4, 2022. Because that date has not yet been reached, the Defendant is not entitled to dismissal of the charges under Rule 600.

Applicant Details

First Name **Connor**
 Last Name **Pestovich**
 Citizenship Status **U. S. Citizen**
 Email Address connor.pestovich@wustl.edu
 Address

Address
Street
8623 Brookshire Lane Apt B
City
St. Louis
State/Territory
Missouri
Zip
63132
Country
United States

Contact Phone Number **5094380311**

Applicant Education

BA/BS From **University of South Carolina-Columbia**
 Date of BA/BS **May 2018**
 JD/LLB From **Washington University School of Law**
http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=42604&yr=2014
 Date of JD/LLB **May 1, 2021**
 Class Rank **10%**
 Law Review/Journal **Yes**
 Journal(s) **Washington University Law Review**
 Moot Court Experience **No**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **Yes**
Externships
Post-graduate
Judicial Law **Yes**
Clerk

Specialized Work Experience

Recommenders

Drobak, John
drobak@wustl.edu
314-935-6487

Kim, Pauline
kim@wustl.edu

Epps, Daniel
epps@wustl.edu
(314) 935-3532

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Connor Pestovich
8623 Brookshire Lane Apt. B
St. Louis, MO 63132

August 25, 2020

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige, Jr.
U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am writing to apply for a clerkship in your chambers beginning in 2021. I am a third-year law student at Washington University School of Law, where I am a Senior Executive Editor of the *Washington University Law Review*.

Enclosed please find my résumé, grade sheet, and writing sample. The writing sample is a response to a motion to dismiss I completed while interning for the United States Attorney's Office in the District of Nevada. The following individuals' letters of recommendation are enclosed.

- Professor John Drobak
- Professor Daniel Epps
- Professor Pauline Kim

I would welcome any opportunity to interview with you. Thank you for your time and consideration.

Sincerely,

/s/ Connor Pestovich

Connor Pestovich

Connor Pestovich

8623 Brookshire Lane Apt. B St. Louis, MO 63132

(509) 438-0311

connor.pestovich@wustl.edu

EDUCATION

WASHINGTON UNIVERSITY SCHOOL OF LAW

St. Louis, MO

Juris Doctor Candidate

May 2021

GPA: 3.82 (Top 10%)

Journal: *Washington University Law Review*, Vol. 98, Senior Executive Editor; Vol. 97, Staff Editor

Clinic: Appellate Clinic (Spring 2021)

Awards: CALI Award for Highest Grade in Federal Income Taxation, Honor Scholar Award, Dean's List (multiple recipient), Certificate for Excellence in Oral Advocacy, Washington University Scholar in Law Recipient (merit-based, 86% tuition)

Activities: Criminal Law Society Treasurer and Asian Pacific American Law Students Association

MOORE SCHOOL OF BUSINESS, University of South Carolina

Columbia, SC

Bachelor of Science, Business Administration

May 2018

Majors: Finance and Real Estate

GPA: 4.0 (*Summa Cum Laude*)

Awards: Office of Multicultural Affairs Celebration of Excellence Award, President's List (multiple recipient), Cooper Scholars Award, and Honors College Graduate

EXPERIENCE

CADWALADER, WICKERSHAM & TAFT LLP

Charlotte, NC

Summer Associate

June 2020-July 2020

- Drafted closing documents used to close a multimillion-dollar securitization deal.
- Researched state law to prepare memorandum for partner to use when drafting contracts.
- Revised a motion for compassionate release filed for high-risk prisoner during the COVID-19 pandemic.

CHIEF JUDGE NANCY J. ROSENSTENGEL, Southern District of Illinois

East St. Louis, IL

Judicial Extern

August 2019-December 2019

- Drafted orders and memoranda addressing legal issues for court personnel.
- Evaluated court filings to advise court personnel about the sufficiency of complaints.
- Researched federal and state law to prepare legal memoranda for the preparation of orders.

UNITED STATES ATTORNEY'S OFFICE, District of Nevada

Las Vegas, NV

Law Clerk Criminal Division

May 2019-August 2019

- Evaluated federal law to compose court documents and legal memoranda to facilitate prosecutions.
- Researched legal issues for preparation of internal memorandums which influenced prosecutorial decisions.
- Analyzed time sensitive legal issues to advise prosecutors resulting in a successful indictment.

RETIREMENT SYSTEM INVESTMENT COMMISSION, State of South Carolina

Columbia, SC

Investment Analyst Intern

January 2018-May 2018

- Analyzed financial data and prepare comprehensive reports to assist in the commission's investment decisions.
- Programmed real-time dashboard to compile financial data and to present statistical and trend observations.
- Compiled market and investment research to contribute to various asset class managers' investment decisions.
- Participated in external investment manager pitches and updates, archived these meetings.

SKILLS & INTERESTS

- Wildlife photographer, baker, multi-instrumentalist, scuba diver, and marathon runner.

Connor Pestovich
Washington University School of Law
Cumulative GPA: 3.82

Fall 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Constitutional Law I	Magarian	B+ (3.52)	4.0	
Contracts	Greenfield	A- (3.70)	4.0	
Legal Practice I: Objective Analysis and Reasoning	Moul	A- (3.58)	2.0	
Torts	Norwood	A (3.76)	4.0	
Dean's List				

Spring 2019

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Civil Procedure	Kim	A (3.82)	4.0	
Criminal Law	Epps	A (3.94)	4.0	
Legal Practice II: Advocacy	Moul	A- (3.70)	2.0	
Legal Research Methodologies II	Bertram	Credit (CR)	1.0	
Negotiation	Reeves	Credit (CR)	1.0	
Property	Drobak	A (3.88)	4.0	
Dean's List.				

Fall 2019

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Antitrust	Drobak	A+ (4.12)	3.0	
Bankruptcy	Schermer/Woolverton	A (3.88)	3.0	
Federal Income Taxation	Wiedenbeck	A+ (4.12)	4.0	CALI award for highest grade.
Judicial Clerkship Externship	Kuehn	Credit (CR)	4.0	
Law Review	N/A	In Progress (CIP)	1.0	
Top 10% of the class. Dean's List.				

Spring 2020

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Corporations	Seligman	Credit (CR)	3.0	Midterm was graded before mandatory Credit/No Credit system was adopted. I recieved an A (3.94) on the midterm.
Criminal Procedure: Adjudication	Epps	Credit (CR)	3.0	
Ethics and Professionalism in the Practice of Law	Pratzel	Credit (CR)	2.0	
Evidence	Burton/Ott/Sherry	Credit (CR)	3.0	
Law Review	N/A	Credit (CR)	1.0	

Pretrial Practice and Settlement	Reese/Wiens	Credit (CR)	3.0
Private Equity Transactions	Wolfe	A- (3.58)	1.0

Washington University School of Law adopted a mandatory Credit/No Credit grading scale for the Spring 2020 Semester. Class rank will not be recalculated until after the Fall 2020 semester. Therefore, my class rank is top 10%.

Fall 2020

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
American Presidency Seminar	Katz		3.0	In Progress
Employment Discrimination	Kim		3.0	In Progress
Federal Courts	Hollander-Blumoff		4.0	In Progress
Information Privacy Law	Richards		3.0	In Progress
Law Review	N/A		2.0	In Progress

Grading System Description

Grading scale is limited to 4.30-2.50, translated to letter grades of A+ to F.

Connor Pestovich
University of South Carolina-Columbia
Cumulative GPA: 4.0

Fall 2015

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Business and Professional Speaking		A	3.0	
Computer Information Systems in Business		A	3.0	
Experimental Music		A	3.0	
Introduction to Financial Accounting		A	3.0	
Rhetoric and Composition		A	3.0	
President's List. Dean's List.				

Spring 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Beginning German		A	3.0	
Descriptive Astronomy		A	4.0	
Introduction to Managerial Accounting		A	3.0	
Principles of Macroeconomics		A	3.0	
Professional Communication		A	3.0	
Statistics for Business & Econ		A	3.0	
President's List. Dean's List.				

Fall 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Beginning German		A	3.0	
Business Careers Global Economy		A	1.0	
Introduction to Finance		A	3.0	
Principles of Marketing		A	3.0	
Survey of Commercial Law		A	3.0	
Topics in British Literature		A	3.0	
President's List. Dean's List.				

Spring 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Contemporary Moral Issues		A	3.0	
Corporate Financial Analysis		A	3.0	
Introduction to Real Estate and Urban Development		A	3.0	
Investment Analysis Portfolio		A	3.0	

Operations Management	A	3.0
Proseminar: Project Planning	Satisfactory (S)	1.0
Trial by Jury from Ancient Rome to Casey Anthony	A	3.0
President's List. Dean's List.		

Fall 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Derivative Securities		A	3	
Financial Statement Analysis		A	3	
Real Estate Finance		A	3	
Real Estate Investment Fundamentals		A	3	
Senior Thesis/Project		A	1.0	
Strategic Management		A	3.0	
The Teacher as Manager		A	3	
President's List. Dean's List.				

Spring 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Fixed Income Securities		A	3.0	
International Financial Management		A	3.0	
Real Estate Market Analysis		A	3.0	
S.C. Semester Seminar		A	3.0	
Senior Thesis/Project		A	2.0	
South Carolina Semester Internship		A	3.0	
Summa Cum Laude. President's List. Dean's List.				

Washington University in St. Louis

SCHOOL OF LAW

December 12, 2019

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige, Jr.
U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

RE: Recommendation for Connor Pestovich

Dear Judge Hanes:

I am writing to support Connor Pestovich's application to be your clerk. I know Connor well. He was a student in my first-year Property course in the spring of 2019, which was the second semester of his first year. As I write this letter, he is a student in my Antitrust course.

Connor is an excellent law student. He earned an A grade (3.88) in Property. The grade was based solely on a three-hour closed-book essay examination. Connor earned the second highest grade in the class on a tricky question involving the construction and application of a recording act and the identification of an equitable mortgage that appeared to be an ordinary fee interest. I enjoyed talking with Connor in the class discussions. Not only was he always well-prepared, his comments were always right on point. Connor's participation in the class discussions in Antitrust this semester has been just as good. I can always rely on him to help me keep the class moving. Although Connor had a high grade point average at the end of his first year, his second semester grades were significantly better than his first semester grades. Connor may be one of those students who took a while to get used to law school essay examinations. His graduating summa cum laude with a 4.0 average from the University of South Carolina also attests to his academic abilities.

I don't know if you are aware of the outstanding quality of the law students at Washington University. In calculating its rankings, U.S. News uses a measure of the quality of a school's entering class that combines the students' LSAT scores and undergraduate grade point averages. Only six law schools outrank Washington University on that measure. Connor's high rank in an outstanding class of law students should make him competitive with the applicants you have from other prestigious schools.

Connor is a friendly, enthusiastic person, who is well-liked by his classmates. I've always enjoyed talking with him. Recently Connor and a couple friends successfully bid for a lunch with me at a student auction fundraiser. I'm looking forward to having lunch with them.

I have no doubt that Connor will be an excellent judicial clerk. His work product will be outstanding, and you and everyone in your chambers will enjoy working with him. I am happy to recommend him most highly to you.

Yours truly,

/s/

John N. Drobak
George Alexander Madill Professor of Real Property & Equity Jurisprudence
Professor of Economics

Washington University School of Law
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St. Louis, MO 63130
(314) 935-6420

John Drobak - drobak@wustl.edu - 314-935-6487

Washington University in St. Louis

SCHOOL OF LAW

February 28, 2020

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige, Jr.
U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

RE: Recommendation for Connor Pestovich

Dear Judge Hanes:

I am pleased to write this letter of recommendation on behalf of Connor Pestovich, who is applying for a judicial clerkship with you. Connor was a student in my Civil Procedure class in the spring of his first year of law school. He is a strong student with sharp analytical skills and will make an excellent judicial clerk and lawyer.

Although Civil Procedure is a large course, Connor's contributions to the class discussion stood out. He was always well prepared for class, and demonstrated his mastery of the material in "cold calls." In addition, I always welcomed his voluntary contributions, which added greatly to the class discussion. His performance on the final exam confirmed my impressions of his strengths as a student, and he earned one of the top grades in the class.

Connor has a strong commitment to constantly learning and improving. This commitment is evident in his trajectory during law school, during which his academic performance has increased steadily each semester. He has also taken on an important leadership role on the Law Review, our school's flagship journal—an indication that he is well respected by his peers.

Connor's ultimate goal is to serve the public by joining the Department of Justice. Because he hopes one day to litigate on behalf of the United States, he understands the importance of developing his skills in writing and advocacy, and appreciates the tremendous opportunity a clerkship would provide to prepare him for such a career.

Because of his outstanding academic record, and his commitment to hard work and public service, I believe Connor will make an excellent judicial clerk and I recommend him highly.

Sincerely,

/s/

Pauline T. Kim
Daniel Noyes Kirby Professor of Law

Washington University School of Law
One Brookings Drive, Campus Box 1120
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(314) 935-6420

Pauline Kim - kim@wustl.edu

Washington University in St. Louis

SCHOOL OF LAW

July 6, 2020

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige, Jr.
U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

RE: Recommendation for Connor Pestovich

Dear Judge Hanes:

I am writing to recommend Connor Pestovich, a member of the Class of 2021 at Washington University School of Law, for a clerkship in your chambers. Connor is a member of the *Washington University Law Review* and is in the top 10% of his class. I think he'd make a very good law clerk and I encourage you to hire him.

I taught Connor his first year in the required first-year Criminal Law course. Connor was a very solid student: he always showed up to class on time, and was well-prepared with good answers every time I "cold-called" him. He didn't raise his hand a lot in class; he's definitely on the quieter side. But it wasn't because he was having any trouble following what was going on, as he made clear on the exam. He received a 3.94 (A) grade for a very strong performance. The exam was difficult, involving multiple-choice and essay portions, with the essay section involving both an issue-spotter and a "policy" question. Connor did well on all three parts of the exam, displaying deft writing ability, comprehensive knowledge of the material, good legal thinking, and a strong ability to manage his time under challenging constraints. Connor also took my Criminal Procedure Adjudication course this past spring; the course ended up graded credit/no-credit due to COVID19, but I'm confident Connor would have gotten another strong grade from me had the semester proceeded as normal.

Connor has done well in his other classes as well. When I first wrote a recommendation letter on his behalf, he was in the top 20%, and I said that "His GPA might understate his abilities, however—his trajectory is upwards, as he received a 3.85 GPA in his spring semester." That turned out to be a great prediction, given that he worked his way up into the top 10%. That's great performance, and that means a lot here at WashULaw these days. We're getting amazing students, due in part to our generous use of merit scholarships. Our student body these days rivals, and in some cases bests, those of "Top 10" schools like Berkeley and Michigan. Connor is the recipient of one of those merit scholarships, and I can say it was a great investment on our part.

Connor is also keeping busy outside the classroom. On top of his *Law Review* commitments (where he serves as Senior Executive Editor), he's also active with the Federalist Society; the Criminal Law Society, the Asian Pacific American Law Students Association, and the Phi Alpha Delta Law Fraternity. This shows an excellent ability to multitask, suggesting he'd have no trouble with a full plate of responsibilities as a law clerk. He has also accumulated a lot of experience that would be particularly helpful as a future clerk, including a summer position at a U.S. Attorney's Office, a semester-long externship for Chief Judge Rosenstengel on the Southern District of Illinois, and another summer position at Cadwalader, Wickersham & Taft. He'd be ready to hit the ground running if you hired him. I think you'd also like Connor a lot if you met him. As I said, he's on the quieter side; he's a bit understated. But he's not meek or lacking in confidence; I think he just lacks an ego problem, and he's also the type who doesn't really like to speak up unless he is sure he has something valuable to contribute. He seems to get along well with his classmates, and I think would be a good presence in your chambers.

For these reasons, I think Connor would be a great hire. Please don't hesitate to contact me via email (epps@wustl.edu) or phone (cell: 6172590109) if you have any questions about Connor's application.

Sincerely,

/s/

Daniel S. Epps
Associate Professor of Law

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St. Louis, MO 63130
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Connor Pestovich
Writing Sample

Writing Sample

The following writing sample was drafted while I was working for the United States Attorney's Office in the District of Nevada. The Defendant was charged with being a Deported Alien Found Unlawfully in the United States. The Defendant filed a Motion to Dismiss collaterally attacking his original removal proceeding because if the original removal was improper, he would be entitled dismissal. In particular, the defendant argued the Notice to Appear was insufficient to vest the Immigration Judge with jurisdiction over his removal proceedings.

Connor Pestovich
Writing Sample

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Representing the United States

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN DOE,

Defendant.

Case No. 2:19-cr-001

**Government's Response in Opposition to
the Defendant's Motion to Dismiss**

This response is timely filed.

Introduction

The defendant's prior deportation/removal from the United States was lawful following a notice to appear which granted an immigration judge jurisdiction over the defendant's removal proceeding. There was no jurisdictional deficiency, so the defendant's removal was lawful and his motion to dismiss, (ECF No. 26), should be denied.

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Connor Pestovich
Writing Sample

Memorandum of Points and Authorities

A. Relevant Facts and Procedural Background

On January 1, 2019, a federal grand jury indicted the defendant John Doe (“Doe”) on a single count of violating Title 8, United States Code, Section 1326 – Deported Alien Found Unlawfully in the United States. (ECF No. 1). The indictment cites multiple prior deportations/removals from the United States on December 2, 2015, April 3, 2016, December 6, 2016, and July 26, 2017. (*Id.*).

On November 13, 2015, immigration officials issued Doe a Notice to Appear (“NTA”) following his felony conviction in the Superior Court of California in Los Angeles County for Attempted Second Degree Robbery, in violation of section 211 of the California Penal Code. (ECF No. 26-1 Ex. A). Doe was charged with being an alien illegally in the United States in violation of the Immigration and Nationality Act (INA) § 212(a)(6)(A)(i), and being an alien who has been convicted of committing acts which constitute the essential elements of a crime involving moral turpitude in violation of INA § 212(a)(2)(A)(i)(I). (*Id.*). Doe signed the certificate of service on November 13, 2015. (*Id.*). The date, time, and place of the hearing were to be set. *Id.* On December 1, 2015, Doe was present at a hearing where an Immigration Judge (“IJ”) ordered Doe removed from the United States. (ECF No. 26-1 Ex. B).

B. Legal Standard

The INA, as amended, provides “[a]n immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien.” 8 U.S.C. § 1229a(a)(1). The Attorney General has authority to prescribe rules for the conduct of removal proceedings. 8 U.S.C. § 1103(g). Exercising that authority, the Executive Office for Immigration Review promulgated rules of procedure for immigration courts, including that “[j]urisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with

Connor Pestovich
Writing Sample

the Immigration Court” 8 C.F.R. § 1003.14(a). One “charging document” is “a Notice to Appear.” 8 C.F.R. § 1003.13. The Act provides that in removal proceedings, immigration officials must personally serve a “notice to appear” on the alien specifying, among other things, “[t]he time and place at which the proceedings will be held.” 8 U.S.C. § 1229(a)(1)(G)(i). But under the Executive Office rules, the “notice to appear” filed as a charging document in the immigration court need not contain the time or place of the proceedings. 8 C.F.R. § 1003.15(b)–(c). Instead, the rules require the immigration officials to include time-and-place information “where practicable,” and if it is not included, “the Immigration Court shall be responsible for scheduling the initial removal hearing and providing notice . . . of the time, place, and date of hearing.” 8 C.F.R. § 1003.18(b). This procedure—the Service’s notice lists the time and place as to-be-determined and the court later sends notice of time and place when it schedules the hearing—is commonly called the two-step notice procedure.

In 2018, the Supreme Court narrowly held that a notice to appear lacking the time and date of the hearing did not trigger the INA’s “stop-time rule” under Sections 1229(a) and 1229b(d)(1)(A) of the Act. *Pereira v. Sessions*, 138 S. Ct. 2105, 2114–2116 (2018). Pereira was a citizen of Brazil who overstayed his non-immigrant visa in the United States. *Id.* at 2112. He was personally served with a notice to appear that did not specify the date and time of the removal hearing. *Id.* When a date was later set, the immigration court attempted to mail the notice to Pereira, but it was sent to the wrong address. *Id.* Pereira “never received notice of the time and date of his removal hearing” and was not present at the hearing where he was removed *in absentia*. *Id.* Pereira’s removal proceedings were reopened because he had not received notice, and he had applied for cancellation of removal, which was a special protection available only to aliens who have been continuously present in the United States

Connor Pestovich
Writing Sample

1 for at least ten years. *Id.* Under the “stop-time rule,” the period of continuous presence or
2 residence is deemed to end “when the alien is served with a notice to appear under section
3 1229(a) of this title . . .” 8 U.S.C. § 1229b(d)(1)(A). Section 1229(a) requires the notice to
4 include, among other things, the time and place of the removal hearing. 8 U.S.C. §
5 1229(a)(1)(G)(i). The Court held that a NTA without the time and place of the removal
6 hearing as required under § 1229(a)(1)(G)(i) is not “a notice to appear under section 1229(a)”
7 and does not trigger the stop-time rule. *Id.* at 2114. The Court remanded the case for further
8 proceedings.

9 On January 28, 2019, a panel of the Ninth Circuit in *Karingithi*, rejected the argument
10 that a NTA lacking time and place information deprived an IJ of jurisdiction over an alien’s
11 removal proceeding. *Karingithi v. Whitaker*, 913 F.3d 1158 (9th Cir. 2019). It dismissed the
12 alien’s invocation of *Pereira* for jurisdictional purposes. The panel stated that the IJ’s
13 jurisdiction “is governed by federal immigration regulations, which provide that jurisdiction
14 vests in the Immigration Court when a charging document, such as a [NTA], is filed. 8 C.F.R.
15 §§ 1003.13, 1003.14(a). The regulations specify the information a [NTA] must contain;
16 however, the time and date of removal proceedings are not specified. 8 C.F.R. § 1003.15(b).
17 Because the charging document in [*Karingithi*] satisfied the regulatory requirements, we
18 conclude the Immigration Judge had jurisdiction over the removal proceedings.” *Id.* at 1158-
19 59. The *Karingithi* panel announced “*Pereira* simply has no application here.” *Id.* at 1161; *see*
20 *Nkomo v. Att’y Gen. of the U.S.*, 930 F.3d 129, 133 (3d Cir. 2019) (“*Pereira* did not purport to
21 resolve issues beyond the § 1229b(d)(1)(A) stop-time rule context[.]”). The panel also noted
22 the BIA had reached a similar conclusion in *Bermudez-Cota*, 27 I. & N. Dec. 441 (BIA 2018).

Connor Pestovich
Writing Sample

C. The Immigration Judge had Jurisdiction over Doe’s Removal Proceedings.

A. A Notice to Appear which Lacks the Address of the Immigration Court Does Not Deprive the Immigration Court of Jurisdiction to Remove the Defendant.

An Immigration Court’s jurisdiction vests when a charging document is filed with the Immigration Court by immigration officials. 8 C.F.R. § 1003.14. “Charging document means the written instrument which initiates a proceeding before an Immigration Judge . . . these documents include a Notice to Appear[.]” 8 C.F.R. § 1003.13. The immigration officers “shall provide in the Notice to Appear, the time, place and date of the initial removal hearing, *where practicable*.” 8 C.F.R. § 1003.18 (emphasis added). “If that information is not contained in the Notice to Appear, the Immigration Court shall be responsible for scheduling the initial removal hearing and providing notice to the government and the alien of the time, place, and date of hearing.” *Id.*

Eight Courts of Appeals, including the Ninth Circuit, have decided jurisdiction vests when a NTA is filed with the Immigration Court, even when the time-and-place of the proceedings is to be determined. *See Karingithi*, 913 F.3d at 1160; *Nkomo*, 930 F.3d at 133 (collecting cases). Reading into the regulatory requirements of a NTA,¹ *Karingithi* held a NTA “need not include time and date information to” vest jurisdiction. 913 F.3d at 1160; *see Nkomo*, 930 F.3d at 134 (“One rule lists what must be included in a notice to appear under §

¹ 8 C.F.R. § 1003.15 (The NTA “must also include the following information: (1) The nature of the proceedings against the alien; (2) The legal authority under which the proceedings are conducted; (3) The acts or conduct alleged to be in violation of law; (4) The charges against the alien and the statutory provisions alleged to have been violated; (5) Notice that the alien may be represented, at no cost to the government, by counsel or other representative authorized to appear pursuant to 8 CFR 1292.1; (6) The address of the Immigration Court where the Service will file the Order to Show Cause and Notice to Appear; and (7) A statement that the alien must advise the Immigration Court having administrative control over the Record of Proceeding of his or her current address and telephone number and a statement that failure to provide such information may result in an in absentia hearing in accordance with § 1003.26.”).

Connor Pestovich
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1003.14, and time and place are conspicuously absent. 8 C.F.R. § 1003.15(b), (c).”). Since “the regulation does not require that the time and date of proceedings appear in the initial notice[,]” the Ninth Circuit held a NTA lacking time and date “met the regulatory requirements and therefore vested jurisdiction in the IJ.” 913 F.3d at 1160 (analyzing the requirements of 8 C.F.R. § 1003.15). According to *Karingithi*, even if the time and date requirements were read into the regulations, it “would render meaningless their command that such information need only be included ‘where practicable.’” *Id.* (quoting 8 C.F.R. § 1003.18). According to *Karingithi*’s reasoning, a NTA which does not contain the Immigration Court’s address will still vest jurisdiction because a NTA shall have the “time, *place* and date of the initial removal hearing, *where practicable*.” 8 C.F.R. § 1003.18 (emphasis added). The requirement to include the address of the Immigration Court is limited to times where it is “practicable,” and to hold otherwise would render 8 U.S.C. § 1003.18 meaningless. *See Karingithi*, 913 F.3d at 1160.² Doe’s NTA “met the regulatory requirements therefore [it] vested jurisdiction in the IJ.” *Id.*

The Ninth Circuit has confirmed the regulations do not require the Immigration Court’s address on a NTA to vest jurisdiction. *Deocampo v. Barr*, 766 F. App’x. 555, 556 (9th

² *But see United States v. Martinez-Aguilar*, No. 5:18-cr-00300-SVW, ECF No. 36 at 4 (C.D. Cal. June 13, 2019) (holding NTA without address of the Immigration Court did not vest jurisdiction.); *United States v. Ramos-Urias*, No. 18-cr-00076-JSW, 2019 WL 1567526, at *3 (N.D. Cal. Apr. 8, 2019) (finding jurisdiction failed to vest with Immigration Court where NTA did not include the address of Immigration Court.). *Martinez-Aguilar* and *Ramos-Urias* are non-binding and directly conflict with the Ninth Circuit’s persuasive authority in *Deocampo*. *See Deocampo v. Barr*, 766 F. App’x. 555, 556 (9th Cir. 2019). The Court should follow the Ninth Circuit and find jurisdiction vests when a NTA is filed with an IJ, regardless if the NTA includes the address of the Immigration Court. *Id.*

Connor Pestovich
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1 Cir. 2019).³ *Deocampo* directly addressed the omission of address information, noting
2 “[a]lthough *Karingithi* did not consider ‘place,’ 8 C.F.R. § 1003.18 lists ‘place’ alongside ‘time’
3 and ‘date’ as information that can be included ‘where practicable.’” *Id.* at 557 n.3 (quoting 8
4 C.F.R. § 1003.18); see *Ali v. Barr*, 924 F.3d 983, 986 (8th Cir. 2019) (“[Defendant]’s argument
5 [that IJ’s jurisdiction is dependent on the NTA including time and place], if accepted, would
6 require us to erase the ‘where practicable’ language in § 1003.18(b).”). Consistent with
7 *Karingithi* and *Deocampo*, to establish jurisdiction, the inclusion of the address of the
8 Immigration Court in a NTA is only compelled when it is practicable. See *United States v.*
9 *Mendoza*, No. 18-cr-00282-HSG-1, 2019 WL 1586774, at *3 (N.D. Cal. April 12, 2019)
10 (“[T]he Court finds [defendant]’s argument that his NTA was jurisdictionally deficient
11 because it did not include address information to be inconsistent with the reasoning of
12 *Karingithi* and *Deocampo*”); *United States v. Mariscal Navarrete*, No. 18-cr-00446-HSG-1, 2019
13 WL 1509179, at *3 (N.D. Cal. Apr. 5, 2019) (Finding the argument that the NTA “was
14 jurisdictionally defective . . . because it did not include the location of the hearing . . .
15 unavailing.”). Since Doe’s NTA met the regulatory requirements, the IJ had jurisdiction. 8
16 C.F.R. § 1003.14.

17 **B. The Immigration Judge had Jurisdiction over Doe Regardless if a Notice of**
18 **Hearing was Filed with Date and Time Information Later.**

19 The language of the regulations is clear and unambiguous, when a NTA is filed with
20 the IJ, jurisdiction vests. 8 C.F.R. § 1003.14 (“Jurisdiction vests . . . when a charging
21 document *is filed* with the Immigration Court[.]”) (emphasis added); see *United States v. Arteaga-*
22 *Centeno*, No. 18-cr-00332-CRB-1, 2019 WL 1995766, at *8 (N.D. Cal. May 6, 2019) (“the

23 _____
24 ³ As an unpublished Ninth Circuit decision, *Deocampo* is not precedent, but should be
considered for its significant persuasive value as a decision directly on point. See Fed. R. App.
P. 32.1.

Connor Pestovich
Writing Sample

1 conclusion . . . that jurisdiction can only vest when the Immigration Court later provides the
2 noncitizen a Notice of Hearing with time and date information is unsupported by either the
3 holding or reasoning of *Karingithi*.”).⁴ While there is a two-step *notice* process, there is no two-
4 step *jurisdiction* process.⁵ See *Gonzalez-Caraveo v. Sessions*, 882 F.3d 885, 890 (9th Cir. 2018)
5 (“Once a notice to appear is filed with the Immigration Court, however, jurisdiction over the
6 individual’s immigration case vests with the IJ, and it is the IJ’s duty to adjudicate the case.”);
7 *Arteaga-Centeno*, 2019 WL 1995766, at *8 (“jurisdiction vested with an immigration court over
8 [] removal proceedings when the [dateless, timeless] NTA was filed.”). It is irrelevant for
9 jurisdictional purposes whether Doe later received a notice of hearing with the date and time,
10 because jurisdiction was vested.⁶ See *Ortiz-Santiago v. Barr*, 924 F.3d 956, 958 (7th Cir. 2019)
11 (“The requirement that a Notice include, within its four corners, the time, date, and place of
12 the removal proceeding is not ‘jurisdictional’ in nature.”). Since 8 C.F.R. § 1003.14 is clear
13 and unambiguous, the BIA’s interpretation of a two-step jurisdiction requirement in *Bermudez-*
14 *Cortez* is foreclosed. See *Kisor v. Wilkie*, 139 S. Ct. 2400, 2415 (2019) (a court should not afford

16 ⁴ Doe relies on two non-binding district court cases to insufficiently argue a curative Notice of
17 Hearing is required to vest jurisdiction when a NTA is filed without a time and place. *United*
18 *States v. Morales-Santiago*, No. 2:18-cr-120-RMP, 2019 WL 1317719, at *1 (E.D. Wash. Mar. 2,
19 2019); *United States v. Hernandez-Fuentes*, No. 2:18-cr-2074-SAB, 2019 WL 1487251, at *1 (E.D.
20 Wash. Mar. 20, 2019). Both cases relied on *Karingithi*’s *Auer* deference towards *Bermudez-Cortez*.
See *id.* Since the regulations are unambiguous that jurisdiction vests when the NTA is filed, no
curative Notice of Hearing is required. See *Kisor v. Wilkie*, 139 S. Ct. 2400, 2415 (2019) (*Auer*
deference is only applied when “the regulation is genuinely ambiguous”).

21 ⁵ Doe’s reliance on *Lopez* is misplaced because *Lopez*, like *Pereira*, is limited to the stop-time rule
22 and NTA requirements under 8 U.S.C. § 1229(a)(1). *Lopez v. Barr*, 925 F.3d 396, 399 (9th Cir.
23 2019) (“To trigger the stop-time rule, a NTA must contain all items listed in Section
1229(a)(1)[.]”). Like *Pereira*, *Lopez* simply has no application here. See *Karingithi*, 913 F.3d at
1161.

24 ⁶ There is no due process violation for lack of notice either. Doe appeared at the proceedings, so
there was actual notice of the proceedings. “Actual Notice is, however, sufficient to meet due
process requirements.” *Khan v. Ashcroft*, 374 F.3d 825, 828 (9th Cir. 2004).

Connor Pestovich
Writing Sample

an administrative agency's interpretation of a regulation "deference unless the regulation is genuinely ambiguous."). Jurisdiction vested when Doe's NTA was filed with the IJ.⁷

C. Doe's Challenge of the Immigration Judge's Removal Order does not Excuse him from 8 U.S.C. § 1326(d)(1)-(2)'s Exhaustion and Deprivation Requirements.

In criminal proceedings, an alien may not challenge the validity of the deportation order under 8 U.S.C. § 1326(a) unless the alien demonstrates "the alien exhausted any administrative remedies that may have been available to seek relief against the order[,] the deportation proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review[,] and the entry of the order was fundamentally unfair." 8 U.S.C. § 1326(d). Section 1326(d) is clear and unambiguous, Doe may not raise a subject matter jurisdictional challenge because he has not demonstrated he exhausted his administrative remedies or was improperly deprived of judicial review. 8 U.S.C. § 1326(d).

By waiving his right to appeal the removal order, Doe failed to exhaust the administrative remedies available to seek relief. (ECF 26, 12). "All [Doe] had to do was to file a motion to reopen for the purpose of challenging the validity of the order." *United States v. Hinojosa-Perez*, 206 F.3d 832, 836 (9th Cir. 2000); *see* 8 U.S.C. § 1229a(c)(7)(A). "[R]emedies were readily available to [Doe] . . . [and] he did not exhaust them." *Hinojosa-Perez*, 206 F.3d at 836. Doe has not shown he has been improperly denied of judicial review either. "Had [Doe] failed administratively to prevail with the BIA on his . . . motion to reopen, the doors to the courts were open" *Id.* Doe's reliance on *Arias-Ordonez* is misplaced, because *Arias-Ordonez*

⁷ "Due process always requires, at a minimum, notice and an opportunity to respond." *United States v. Raya-Vaca*, 771 F.3d 1195, 1204 (9th Cir. 2014) (citations omitted). Doe's reliance on *Raya-Vaca* is misplaced because Doe's due process was not violated. *Id.* Doe had actual notice and an opportunity to respond at his removal hearings. *Id.* *Raya-Vaca*, which was concerned with expedited removal proceedings, is inapposite to the issue in Doe's Motion to Dismiss. *Id.*

Connor Pestovich
Writing Sample

held the requirements of § 1326(d) were satisfied “when the government *misinforms* an alien that he is ineligible for relief.” *United States v. Arias-Ordonez*, 597 F.3d 972, 977 (9th Cir. 2010) (emphasis added). The IJ had jurisdiction, so Doe was *not* “misled to believe his removal was valid[.]” *United States v. Rodriguez-Rosa*, No. 3:18-cr-00079-MMD-WGC, 2018 WL 6635286, at *8 (D. Nev. Dec. 11, 2018). Doe has failed to prove he exhausted his administrative remedies and was deprived of judicial review, therefore his collateral attack is precluded. 8 U.S.C. § 1326(d).

D. Conclusion

WHEREFORE, for all the foregoing reasons, the government respectfully requests that the Court deny the Motion.

Dated this 23rd day of July 2019.

Respectfully submitted,

NICHOLAS A. TRUTANICH
United States Attorney

/s/ / Jared L. Grimmer
JARED L. GRIMMER
Assistant United States Attorney

Applicant Details

First Name **Royston**
 Middle Initial **J**
 Last Name **Peters**
 Citizenship Status **U. S. Citizen**
 Email Address royston.peters@law.bison.howard.edu

Address

Address Street 500 Main Street City East Haven State/Territory Connecticut Zip 06512 Country United States

Contact Phone Number **19176271579**

Applicant Education

BA/BS From **State University of New York-College at Plattsburgh**
 Date of BA/BS **May 2015**
 JD/LLB From **Howard University School of Law**
http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=50906&yr=2011
 Date of JD/LLB **May 9, 2020**
 Class Rank **30%**
 Does the law school have a Law Review/Journal? **Yes**
 Law Review/Journal **No**
 Moot Court Experience **Yes**
 Moot Court Name(s) **Goler Teal Butcher International Moot Court Team**

Howard prohibits students from joining both Law Review/Journal and Moot Court at the same time.

Bar Admission

Admission(s) **District of Columbia**

Prior Judicial Experience

Judicial Internships/Externships	No
Post-graduate Judicial Law Clerk	Yes

Specialized Work Experience

Specialized Work Experience **Bankruptcy, Pro Se**

Recommenders

Johnson, Darin
 darin.johnson@law.howard.edu
 Quereshi, Ajmel
 aquereshi@naacpldf.org
 202-216-5574
 Bawa, Jasbir K.
 jbawa@law.howard.edu
 (202) 806 - 8174

References

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 Arlington, VA 22209
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Cheryl A. Stultz
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National Railroad Passenger Corporation (Amtrak)
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Fax 202.906.2821
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Bharati Narumanchi, Esq. Director of Recruitment The Legal Aid
Society 199 Water Street, Room 6051 New York, NY 10038 Phone:
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William Peters, J.D., LL.M.
Associate Professor of Criminal Justice
The State University of New York at Plattsburgh
101 Broad Street
Plattsburgh, NY 12901
Phone: 518-564-3343
Email: Wpete002@plattsburgh.edu

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

Royston J. Peters
5429 Connecticut Ave, Apt #401
Washington, D.C. 20015

August 20, 2020

Honorable Elizabeth W. Hanes
U.S. Magistrate Judge
U.S. District Court, Eastern District of Virginia
701 East Broad Street
Richmond, VA 23219

Dear Judge Hanes,

I am a Spring 2020 graduate of Howard University School of Law, and I am writing to apply for the two-year Term Law Clerk position beginning in August 2021. My professional and interning experiences have provided me with ample familiarity with working in fast-paced, high stakes environments. I am interested in this clerkship opportunity because it will provide me with significant litigation experience and better prepare me to serve as a future Term Law Clerk for the U.S. Court of Appeals. This Fall I will be working in the Commercial and IP Department at the U.S. Marine Corps.

After college, I worked for the New York City Council and the New York State Legislature. I found myself energized by the opportunity to work for and with vulnerable populations. Both positions helped me develop my oral advocacy skills as I regularly gave speeches on behalf of the Councilman at Community Board meetings and on behalf of the Senator at the Board of Standards & Appeals hearings on proposed zoning applications. Since entering law school, I have committed myself to becoming a better oral advocate. As such, during my second year of law school, I joined the Goler Teal Butcher International Moot Court Team and served as its President during my last year at Howard.

I was first exposed to the litigation practice during my second semester of law school while interning over alternative spring-break with the Prisoners' Rights Project Division in New York. There, I conducted compassionate prison intake interviews and drafted a memo on the Prison Rape Elimination Act to support my supervisor's lawsuit against New York City. During Summer 2018, I was again exposed to the litigation practice while interning at Rosetta Stone Ltd. There, I was able to reinforce my legal writing skills by preparing a response brief to an employee's discrimination and retaliation lawsuit.

I further honed my legal research and writing skills by serving as a Student Attorney for the Howard Law Civil Rights Litigation Clinic. My work with the clinic offered an array of invaluable experiences: I authored and submitted a Motion to Reconsider with the Baltimore Immigration Court and learned how to conduct effective but compassionate client interviews. During Summer 2019, I interned at the National Railroad Passenger Corporation (Amtrak) where I was able to further develop my research and writing skills by preparing a memo regarding an employee's abuse of the Family & Medical Leave Act, and a memo regarding the condemnation of a religious institution's property. This past Fall, I worked for the Federal Aviation Administration's Office of Civil Rights where I was able to draft numerous final agency decisions on Title VII and ADEA claims.

Enclosed please find my resume, writing sample, transcript, and reference list. The writing sample addresses a male-to-female transgender student's Equal Protection lawsuit against her high school for prohibiting her from joining the female swim team. The writing sample was only edited by me. If you need to contact me, please feel free to email me at Royston.peters@law.bison.howard.edu or call me at 917-627-1579.

Sincerely,
Royston J. Peters

ROYSTON J. PETERS

WASHINGTON D.C. • 917-627-1579 • ROYSTON.PETERS@LAW.BISON.HOWARD.EDU

EDUCATION

HOWARD UNIVERSITY SCHOOL OF LAW

AUG 2017-MAY 2020

J.D., 86.64/ Top 25%

- Leadership:** 2020 Class Council, *Chief of Staff*
Spottswood Robinson, *Fellow*
International Moot Court, *President*
Certified Mediator
- Honors:** ACC NCR Corporate Scholar
Cali Excellence Award, *Business Organizations*
Latham & Watkins LLP, *Mergers & Acquisitions Certification Program*
Latham & Watkins LLP, *White Collar Defense & Investigations Certification Program*
- Service:** Legal Aid Society, Prisoner's Rights (NY), *Alternative Spring Break Participant*

STATE UNIVERSITY OF NEW YORK AT PLATTSBURGH

AUG 2011- MAY 2015

B.A., Political Science & Criminal Justice, cum laude—3.66

- Leadership:** Student Affairs, VP; Intramural Tennis Champion,
Political Science Honor Society, President.
- Honors:** Presidential Award of Student Excellence (2015), Omicron Delta Kappa,
Alpha Phi Sigma, Sigma Alpha
- Abroad:** New York University at Prague, Czech Republic, & Germany

PROFESSIONAL EXPERIENCE

FAA, OFFICE OF CIVIL RIGHTS, WASHINGTON, DC

SEP 2019-DEC 2019

Law Clerk

- Prepared and cite-checked legal briefs, motions and other legal documents for the supervising attorney.
- Advised employees of their rights, conducted witness interviews and factual investigations.

AMTRAK, WASHINGTON, DC

MAY 2019- AUG 2019

Law Clerk

- Prepared briefs in response to employees' abuse of the Family & Medical Leave Act.
- Drafted and submitted testimony regarding the Maryland Trust Act to the Maryland State Legislature.

HOWARD LAW CIVIL RIGHTS LITIGATION CLINIC, WASHINGTON, DC

JAN 2019-MAY 2019

Student Attorney

- Prepared motions and memoranda to support pending cases with the Baltimore Immigration Court.
- Researched cited case law within briefs for validity and applicability using LEXIS and Westlaw.

ROSETTA STONE LTD., ARLINGTON, VA

MAY 2018-AUG 2018

Law Clerk

- Reviewed documents for relevance and privilege; and performed complex legal research.
- Conducted witness interviews and utilized eDiscovery platforms, such as Relativity and Summation.

OFFICE OF SENATOR TONY AVELLA, QUEENS & ALBANY, NY

FEB 2016-MAY 2017

District Representative and Board of Standards & Appeals (BSA) Specialist

- Represented the Senator on a weekly basis at Community Board meetings and drafted speeches.
- Appeared before BSA to provide testimony on the Senator's behalf on pending zoning applications.

OFFICE OF COUNCILMAN MATHIEU EUGENE, BROOKLYN, NY

AUG 2015-FEB 2016

Councilmanic Aide

- Prepared reports on public health, veteran affairs, affordable housing, and youth employment.
- Supported the communications team by writing speeches and photographing various events.

Royston Peters
Howard University School of Law
Cumulative GPA: 87.46

Fall 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Legislation Regulation	Monya Bunch	79	3	
Torts	Mariela Olivares	87	4	
Contracts	Alice M. Thomas	P	5	
Civil Procedure	Darin Johnson	87	4	
Legal Reasoning & Writing I	Jasbir K. Bawa	P	4	

Spring 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Criminal Law	Kelli Neptune	79	3	
Real Property	Dale Whitman	87	4	
Contracts Continued	Alice M. Thomas	83	5	
Legal Reasoning & Writing I Continued	Jasbir K. Bawa	89	4	
Constitutional Law I	Ziyad Motala	89	3	

Summer 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Business Organizations	Sherman Rogers	98	4	Received a Cali Award for this class.

Fall 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
International Moot Court	Waris Husain	P	1	
International Law	Ziyad Motala	90	3	
Alternative Dispute Resolution	John Woods	88	3	
Constitutional Law II	Ziyad Motala	80	3	
Professional Responsibility	Patricia M. Worthy	88	3	
National Security Law	Darin Johnson	87	3	

Spring 2019

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
ADR Skilled based Mediation Training	Homer C. Larue	91	3	
International Moot Court	Waris Husain	P	1	
Legal Writing II	Jasbir K. Bawa	91	2	

CD: Labor-Management Cooperation	Mathews	P	1
Civil & Human Rights Clinic I	Ajmel Quereshi	90	6
Remedies	Sherman Rogers	82	3

Summer 2019

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Sales & Secured Transaction	Alice Thomas	93	4	

Fall 2019

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Family Law Practic	Judge Woodall	90	3	
Trademark Law	Philip G. Hampton II	73	3	
Evidence	Josephine Ross	81	4	
Municipal Law	Rrederick Cooke	86	3	

Spring 2020

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
International Moot Court	Waris Husain	Pass	2	
CD:Federal Criminal Civil Rights	Adam H Kurland	Pass	2	
Copyrights	Lateef Mtima	Pass	3	
Civil Proc II-Complex Litigation	Andrew I Gavil	Pass	3	
Broker/Dealer Regulation	Cheryl C Nichols	Pass	3	

Due to COVID-19, the law school did not give numerical grades but rather did pass/fail or credit/no credit based on students' performance on the final exams.

Grading System Description

A =90-100

B =80-89

C = 70-79

D = 60-69

F= 50-59

GPA Standard

90-100= 4.0

89 – 85 = 3.99 – 3.50

84 – 80= 3.40 – 3.00

79 – 75= 2.99 – 2.50

74 – 70= 2.49 – 2.00

69 – 65= 1.99 – 1.50

64 – 60= 1.49 – 1.00

59 – less= .99 – less

Royston Peters
State University of New York-College at Plattsburgh
Cumulative GPA: 3.66

Fall 2011

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Intro to Info & Tech Literacy		A	1	
Elem College Math		A	3	
Sexuality, Power & Relationships		P	1	
Topics: Freshman Seminar		A	2	
College Writing I		A	4	

Spring 2012

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Intro Statistics		B+	3	
Intro to Sociology		B	3	
Intro to Public Speaking		A-	3	
Public Policy/Administration		B+	3	
College Writing II		A-	3	

Summer 2012

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
International Relations		B	3	
Concepts in Biology		B	3	

Fall 2012

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
History of Political Ideas		B	3	
Introduction to Legal Studies		B-	3	
State/Local Government		RB-	3	I got a B-, but retook this class.
Criminology & Justice System		RC+	3	I got a C+, but retook this class.
Quantitative Politic Analysis		B	3	

Spring 2013

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Elementary French I		RB	3	
General Psychology		W	3	I withdrew from this course, but took it in my junior year.
U.S. Civil Liberties		B	3	

Afro-Caribbean Civilizations	B+	3
Lesbian & Gay Studies	A-	3

Fall 2013

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Political Movements		A	3	
Civ & Cultures Southern Africa		A-	3	
Comparative Politics		A-	3	
Criminology and the CJ System		A	3	
Domestic Policy		A-	3	

Spring 2014

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
General Psychology		A	3	
Punishment and Society		A	3	
Juvenile Delinquency		A	3	
Intro to African American Lit		A-	3	
Instruct Pract-TA		A	3	
African-American Experience		A	3	
Courts and Criminal Procedures		A	3	

Summer 2014

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Study Abroad Criminology		A	6	

Fall 2014

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Topics/World Affairs: Asia International Relations		A-	3	
State and Local Government		A-	3	
Elementary French I		B+	3	
Issues in Criminal Justice		A	3	
Criminal Law		A	3	
Seminar Political Persuasion		A-	3	

Spring 2015

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Ethics in Criminal Justice		A-	3	
Social Problems/Policy		A	3	

Grammar Workshop	A	3
White Collar Crime	A	3
Political Sociology	A-	3

Please let me know if you want a copy of my official transcript.

Grading System Description**GRADING SYSTEM**

Grade A = 4.0

A- = 3.7

B+ = 3.3

B = 3.0

B- = 2.7

C+ = 2.3

August 24, 2020

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige, Jr.
U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am writing this letter in support of Royston Peters' candidacy for a clerkship in your office. I have known Royston for the past three years, since he was a first year student in my Civil Procedure class. It has been a pleasure to watch Royston's growth over his law school career. Royston has always been a hard-working, intellectually curious and engaging law student. Royston's academic success is reflected by the fact that he is in the top quarter of his class. Throughout his law school career, Royston has developed critical skills in legal analysis, research and writing that will make him an asset to any judicial chambers.

I have seen Royston's legal abilities first-hand. In his first year, Royston performed well in my Civil Procedure lecture, placing in the top quintile of the class. I write very challenging exams, and Royston's strong performance in the class is a testament to his understanding of challenging legal concepts and to his ability to strongly communicate that understanding back in written form on his exam. In his second year of law school, Royston was a student in my National Security Law seminar, where he completed his required legal writing thesis. In order to receive credit for his thesis, Royston had to conduct significant legal research and several drafts of his paper in close consultation with me. His final paper was well-researched, creative, and well-written. From my experience working with Royston as his legal thesis adviser, I can confidently say that you will receive outstanding legal research and an excellent legal work product in any research request that you might make of him.

Finally, I would like to take a moment to discuss Royston's personal qualities. Royston is a kind and affable individual with a pleasant and calm demeanor. He will make an excellent counselor and judicial clerk, because no matter how hectic or stressful the legal case or court schedule, he will bring a sense of calm assurance to any assignment. He is well-liked and admired by students and faculty alike, and I have no doubt that he will be a collegial member of any judicial chambers. I am certain that should he become a judicial clerk in your chambers, he will be one of your most distinguished and successful clerks.

Royston has my highest recommendation for a clerkship in your chambers. Please do not hesitate to contact me at darin.johnson@law.howard.edu should you have any questions regarding his candidacy.

Sincerely,

Darin Johnson
Associate Professor of Law

Darin Johnson - darin.johnson@law.howard.edu

August 22, 2020

The Honorable Elizabeth Hanes
 Spottswood W. Robinson III & Robert R. Merhige, Jr.
 U.S. Courthouse
 701 East Broad Street, 5th Floor
 Richmond, VA 23219

Dear Judge Hanes:

I write to enthusiastically recommend Royston Peters for a clerkship in your chambers, beginning in August 2020. As the Director of the Howard University School of Law Civil Rights Clinic, I worked closely with Royston on several cases and can speak strongly of not only his impressive writing abilities, but also his unique analytical ability to cut to the heart of any legal matter with which he is dealing. Simply stated, he was one of the best students in the course. A quick review of his resume reveals an impressive start to his young career. He is in the top quarter of his class at Howard, where he also served as a teaching fellow, and has previously worked for a member of the New York State Senate and the New York City Council.

As noted, most of my interactions with Royston have come in the context of the Civil Rights Clinical course within which he was enrolled during the Spring of 2019. Accordingly, a few words regarding the Clinic and its work seem appropriate. The Civil Rights Clinic engages in trial and appellate litigation in the service of human rights, social justice and economic fairness. The Clinic provides pro bono services to indigent, prisoner and pro se clients in federal and state courts on a range of civil rights matters, including but not limited to employment and housing discrimination, voting rights, police brutality and unconstitutional prison conditions. Students not only conduct all background research for each case, but are directly involved in formulating case strategy, presenting oral arguments and most relevant to the clerkship, composing trial and appellate level briefs.

I worked closely with Royston on two projects, each of which required someone with his strong ability to understand complex legal doctrines and to communicate this understanding in writing. For example, Royston was one of a limited number of students who I offered the chance to draft testimony to the Maryland House of Delegates and Senate on behalf of the Civil Rights Clinic. And once he joined the group, his work did not disappoint. Specifically, the testimony concerned the authority of local police to enforce federal immigration law, and the myriad of constitutional and statutory questions this raised related to, among other things, preemption, due process, and equal protection under the law. As the testimony concerned a novel issue on which there were only a limited number of prior relevant cases, I needed someone who could read the cases closely and find creative arguments to support our position. Royston's research played this vital role. His reading of prior decisions was insightful and detailed. Likewise, he came up with several bases upon which to distinguish contrary decisions. The second project – the drafting of a brief on behalf of a petitioner in a case before the Board of Immigration Appeals – involved many of these same skills, and Royston did a similarly excellent job. If he is fortunate enough to clerk in your chambers, I believe it is precisely these skills that will ensure he succeeds.

I could say much more about Royston. However, in closing, let me finish by emphasizing an important point. On multiple occasions, Royston and I have discussed his motivations for attending law school and his career interests. During the course of these meetings, we had several conversations and I have come to know his personality well. He is compassionate and thoughtful. He expresses his thoughts only after reflecting carefully on what he is about to say. Additionally, he is personable and good-humored. Given the small number of people working in most Judges' chambers, I imagine you will work closely with each of your clerks, as well as they with each other. Were I choosing someone to work with on a day to day basis, I would want to work with someone with Royston's character, temperament and personality.

In summary, I recommend Royston highly for a position in your chambers. If I can provide further detail, please feel free to contact me at the information listed below.

Sincerely,

Ajmel Quereshi
 Director, Civil Rights Clinic
 Howard University School of Law
 2900 Van Ness Street, NW
 Washington, DC 20008
 Ajmel.Quereshi@howard.edu
 (202) 216-5574

Ajmel Quereshi - aquereshi@naacpldf.org - 202-216-5574

August 24, 2020

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige, Jr.
U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am writing to recommend Royston Peters for a position within your Chambers. As a professor at Howard University School of Law for ten years, I had the pleasure of teaching Mr. Peters during his first year of Legal Research and Writing in 2017. He received a grade of 89 in my class. Mr. Peters chose to take my Legal Writing II course, a one semester course focused on appellate advocacy, where he continued to hone his skills and received a grade of 91. Having worked with him closely on his writing for a year and a half, I feel qualified to state that he is a strong candidate for this position.

Mr. Peters has demonstrated a strong work ethic in both of my courses. He has been diligent about having his drafts completed in advance so that he can meet with me about his work product. Mr. Peters was consistently prepared and engaged in the material and often visited me in office hours to aid his understanding and seek further critique of his work. He has taken on leadership roles within the Howard community, including President of the International Moot Court team this school year. Mr. Peters has a broad range of professional experience evidenced by his internships and work experience in both the private and public sector. Finally, Mr. Peters has a pleasant personality, enabling him to transition between shifting environments and manage various personalities seamlessly.

I am confident that Mr. Peters' determination, intellect, and commitment to public service will be an asset to your chambers. Please feel free to contact me at jbawa@law.howard.edu should you need any further information regarding Mr. Peters.

Respectfully,

Jasbir K. Bawa
Assistant Professor of Lawyering Skills

Jasbir K. Bawa - jbawa@law.howard.edu - (202) 806 - 8174

Royston Peters

MEMORANDUM

FROM: Royston Peters

TO: Professor Bawa (Closed Universe)

DATE: November 20, 2019

RE: Blair Morgan's Potential Equal Protection Violation Claim—File # 467738907

QUESTION PRESENTED

Under the Fourteenth Amendment, which ensures Equal Protection under the law, does Blair, a male-to-female transgender student, have a viable Equal Protection claim when Reading High school removes her from the female swim team to promote equality between the sexes, redress past discrimination against women in athletics, and safeguard bathroom users' privacy?

BRIEF ANSWER

No, most likely not. The Court will likely find that Reading High School satisfy intermediate scrutiny because promoting equality between the sexes and redressing past discrimination against women in athletics are important governmental interests and removing Blair from the female swim team is substantially related to achieving those interests. However, the Court will likely find that removing Blair from the female swim team to protect bathroom users' privacy does not satisfy intermediate scrutiny because the bathroom's layout already protects students' privacy. Irrespective, since Reading High School can establish an important government interest and demonstrate that removing Blair is substantially related to achieving those interests, Blair's claim will most likely be unsuccessful.

STATEMENT OF FACTS

Mr. Eric Turman is the principal of Reading High School in Reading, Pennsylvania. As principal, the Pennsylvania Interscholastic Athletic Association (PIAA)

Royston Peters

allows him to decide whether a student can participate on an athletic team at the school. Mr. Turman exercised this discretion when he allowed a male-to-female transgender student, Blair Morgan, to try out for the female swim team. Blair, who is fifteen-years-old, has not undergone hormone treatments nor sexual reassignment surgery. Blair is 5 feet 5 inches and weighs 130lb; half the girls on the swim team are taller than her.

Parents were outraged that Blair made the team. As such, they have threatened to alert the media and initiate a law suit against the school if Blair is not removed from the team. A parent has also expressed that her daughter's privacy is being invaded because the school allows Blair to use the female bathrooms. For the most part, staff and students treat Blair consistent with her gender identity. Furthermore, faculty is aware that Blair uses the bathroom matching her gender identity.

The team's coach initially did not question matters of fairness and equality, but now has doubts about whether Blair has an advantage over her female competitors. While Reading High school has single user bathrooms and bathrooms with stalls that can be locked, the locker room's layout is unknown. It is also unknown whether Blair has caused harm to other students' privacy interests by using the school's locker room. Our client, Principal Turman, wants to know whether Blair will have a viable Equal Protection claim against the school if he removes her from the swim team.

DISCUSSION

I. A District Court will likely find that removing Blair Morgan, a male-to-female transgender student, from the female swim team does not violate the Equal Protection Clause.

The Fourteenth Amendment states that, "[N]o state shall deny any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. The Equal

Royston Peters

Protection Clause prohibits classifications that treat similarly situated persons differently. Clark v. Ariz. Interscholastic Ass’n, 695 F.2d 1126, 1128-29 (9th Cir. 1982). Actionable Equal Protection claims must demonstrate that a person’s rights, secured by the Constitution and/or laws of the United States, were violated, and that the violation was committed by a person acting under color of the state. Johnston v. Univ. of Pittsburgh, 97 F. Supp. 3d 657, 666 (W.D. Pa. 2015). “[A]ctivities of a voluntary association of all public and most private high schools...are so intertwined with the state, as to amount to ‘state action.’” Clark, 695 F.2d at 1128. Therefore, the Equal Protection Clause applies to public school districts maintained under the laws of the Commonwealth of Pennsylvania. Evancho v. Pine-Richland Sch. Dist., 237 F. Supp. 3d 267, 284 (W.D. Pa. 2017).

A court may employ any of the three levels of scrutiny when assessing Equal Protection claims: (1) rational basis, (2) intermediate scrutiny, or (3) strict scrutiny. Clark, 695 F.2d at 1129. Neither the U.S. Supreme Court nor the Third Circuit has recognized transgender people as a suspect classification, leaving courts to apply either rational or intermediate review. Id. at 668; see Evancho, 237 F. Supp. 3d at 289 (applying intermediate scrutiny to transgender students’ Equal Protection claims). But see Johnston, 97 F. Supp. 3d at 681 (applying rational basis review to a transgender student’s Equal Protection claim).

However, Johnston has little persuasive value because the, “[C]ourt relied on outdated, *Pre-Price Waterhouse* case law from other circuits.” Bd. of Educ. of Highland Local Sch. Dist. v. U.S. Dep’t of Educ., 208 F. Supp. 3d 850, 887 (S.D. Ohio 2016). As such, intermediate scrutiny will be applied to these facts, and the challenged classification

Royston Peters

must serve an important government interest and the discriminatory means employed must be substantially related to achieving that interest. Id. at 667.

On these present facts, Principal Turman has identified the following, potential government interests: (1) promoting equality between the sexes and redressing past discrimination against women in athletics, and (2) safeguarding students privacy. Here, a Court will likely find that promoting equality between the sexes and redressing past discrimination against women in sports are important government interests and that removing Blair from the team is substantially related to achieving those interest. However, removing Blair from the female swim team for privacy concerns are not substantially related to the government's interests. Irrespective, since Reading High School can establish an important government interest and demonstrate that removing Blair is substantially related to achieving those interests, Blair's claim will most likely be unsuccessful.

A. A District Court will likely find that promoting equality between the sexes and redressing past discrimination against women in sports are important government interests and that removing Blair from the team is substantially related to achieving those interests.

Under intermediate scrutiny, the Supreme Court evaluates difference between the sexes, including physical ones, when determining matters of equality in allowing males to participate on female athletic teams. Clark, 695 F.2d at 1129.

Biological differences between the sexes can afford males an advantage in female athletics. Id. at 1139. In Clark, a male student was prohibited from joining the female volleyball team. Id. at 1127. The court held that promoting equal opportunity between the sexes and redressing past discrimination against females in sports are important government interests and prohibiting a male student from joining a female team was

Royston Peters

substantially related to achieving those interests. Id. at 1130. The court reasoned that due to the physiological differences between the sexes, males would displace females substantially if they were allowed to compete in female sports. Id. at 1131; see generally PIAA Const. & Bylaws, § 4 (2016) (stating that, “To promote participation by the historically underrepresented gender in a fair competitive environment, PIAA therefore, classifies sports by gender.”).

Here, like in Clark, a biological male student wants to join a female athletic team. Similar to Clark, a court is likely to find that Blair would have an advantage over her female competitors, because she has not undergone any hormone therapy treatments nor sexual reassignment surgery. Thus, she fully retains her male hormones—testosterone. Furthermore, by Blair being on the team, she is depriving another female student of the opportunity of being on the team. Similar to Clark, the court is likely to find that promoting equality between the sexes and redressing past discrimination against women is an important government interest. Additionally, like in Clark, a court will likely find that those interests are substantially related to removing Blair from the team, because by allowing a male to be on the team, it is depriving biological female students from filling that spot.

In contrast, a court can find that Blair does not have an advantage over her female competition, because she is smaller in stature than half the other females on the swim team. She failed to make the team initially, committed herself to training thereafter and earned a spot on the team the second time around. Furthermore, it would be unfair to remove Blair off the team after allowing her to try out for it.

Royston Peters

However, if the school was legally compelled to allow Blair to swim, it would also be legally compelled to allow any transgender student, even the stronger, more developed transgender females who would in fact, have a substantial advantage because of their increased testosterone levels. Nothing would preclude that situation. In fact, if you were to construe the law in Blair's favor, the school would have to allow any male-to-female transgender student to compete on girls' team, even if it can be demonstrated that their male hormones give them a significant physical advantage.

Therefore, removing Blair from the female swim team will likely be substantially related to promoting equality between the sexes and redressing past discrimination against women, because Blair is biologically male.

B. A District Court will likely find that privacy is an important government interest, but that removing Blair from the female swim team is not substantially related to protecting other students' privacy in bathrooms.

Under intermediate scrutiny, the justification for the discriminatory means employed may not be based upon overbroad generalizations, but must instead be a genuine justification. Whitaker, 858 F.3d at 1050.

A bathroom that provides stalls which locks protect a student's privacy interests. Evancho, 237 F. Supp. 3d at 276. In Evancho, three transgender students were restricted by their school from using the bathrooms matching their gender identities. Id. at 272. The court held that the policy was important, but restricting those students was not substantially related to safeguarding other bathroom users' privacy interests because the layout of the bathrooms already protected students' privacy. Id. at 294. The court noted that the bathrooms were well maintained and lit, had locking stall doors, and urinal dividers. Id.; see also Whitaker, 858 F.3d at 1052 (stating that the school's bathroom

Royston Peters

layout was not, “Susceptible to an intrusion upon an individual’s privacy,” because concerned individuals could lock the stall doors). see generally Johnston, 97 F. Supp. 3d at 669 (stating that, “Sex segregated locker rooms protects a student’s privacy right to disrobe and shower outside the presence of members of the opposite sex.”).

Here, like the bathrooms in Evancho and Whitaker, the bathrooms at Reading High school have single user bathrooms and bathrooms with stalls that can be locked. Similar to those cases, a court is likely to find that the bathroom’s layout adequately protects students’ privacy interests. Similar to those cases, a court is likely to find that protecting a student’s privacy in bathrooms is an important government interest. However, removing Blair is not a genuine justification, because concerned students can use the single user bathrooms or lock the stall door in the common bathrooms. Therefore, removing Blair from the team is not substantially related to protecting bathroom users’ privacy interests, as female bathroom user’s interests are already being protected by the bathroom’s layout.

Therefore, removing Blair from the female swim team is not substantially related to protecting students’ privacy because those interests are already being protected by the school providing single user bathrooms and bathrooms with private stalls which locks.

CONCLUSION

Blair Morgan will likely not have a viable Equal Protection claim, based on her transgender status, against Reading High school if she is removed from the female swim team. While Reading High School’s policy will be unable to satisfy intermediate scrutiny on privacy grounds, it will be able to satisfy intermediate scrutiny on the basis that

Royston Peters

allowing a biologically male students to participate in female sports teams deprives biologically female students of opportunities for athletic enrichment. Therefore, Reading High can establish an important government interest, and prove that Blair's removal is substantially related to achieving that interest.

Applicant Details

First Name	Alyssa		
Middle Initial	M		
Last Name	Petroff		
Citizenship Status	U. S. Citizen		
Email Address	apetroff@umassd.edu		
Address	<table> <tr> <th>Address</th> </tr> <tr> <td> Street 163 Winter Street Apt 2 City Fall River State/Territory Massachusetts Zip 02720 Country United States </td> </tr> </table>	Address	Street 163 Winter Street Apt 2 City Fall River State/Territory Massachusetts Zip 02720 Country United States
Address			
Street 163 Winter Street Apt 2 City Fall River State/Territory Massachusetts Zip 02720 Country United States			
Contact Phone Number	480-678-1636		

Applicant Education

BA/BS From	University of Maryland-University College
Date of BA/BS	May 2015
JD/LLB From	University of Massachusetts School of Law-Dartmouth
Date of JD/LLB	May 14, 2022
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	UMass Law Review
Moot Court Experience	No

Bar Admission**Prior Judicial Experience**

Judicial Internships/ Externships	Yes
--------------------------------------	------------

Post-graduate Judicial
Law Clerk **No**

Specialized Work Experience

Professional Organization

Organizations **Just the Beginning/Share the Wealth**

Recommenders

Ho, Jeremiah
jho@umassd.edu

Dunlap, Justine
jdunlap@umassd.edu
508-985-1158

McConnell, John
Judge_McConnell@rid.uscourts.gov
401-752-7020

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

Alyssa M. Petroff

163 Winter Street Apt 2 | Fall River, MA 02720
480.678.1636 | apetroff@umassd.edu

June 25, 2021

Judge Elizabeth W. Hanes
U.S. District Court, Eastern District of Virginia
701 East Broad Street
Richmond, VA 23219

Dear Judge Hanes,

Please accept my application for a 2022-2024 Term Law Clerk position within your chambers. I am currently a 3L at the University of Massachusetts School of Law. Given my academic achievement, law journal and internship experience, and professional background, I feel as though I would be the ideal candidate for this role. Please see my attached application materials.

With a strong interest in public service, I have been awarded a Public Interest Law Fellowship. The award has allowed me to complete more than 250 volunteer hours while in school and commit to a career in public service post-graduation.

I am in the top fifteen percent of my law school class and serve as the Business Editor of the *UMass Law Review*. I have recently begun an internship within the chambers of Judge O. Rogeriee Thompson in the U.S. Court of Appeals for the First Circuit. This opportunity, coupled with my first judicial internship, will allow me to further hone my legal research and writing skills which will leave me well prepared for a clerkship. In addition, I have served as the Teaching Assistant for the first-year Civil Procedure course which allowed me to sharpen my procedural understanding. Furthermore, my prior professional career has taught me invaluable skills that I will bring to my clerkship position such as a high level of professionalism and maturity, being a self-starter, and strong communication skills.

I would appreciate the opportunity to speak with you further about this position. Please contact me at your earliest convenience at 480.678.1636 or apetroff@umassd.edu. I thank you for your consideration and look forward to hearing from you soon.

Regards,



Alyssa Petroff

Alyssa M. Petroff

163 Winter Street Apt 2 | Fall River, MA 02720

480.678.1636 | apetroff@umassd.edu

Education

University of Massachusetts School of Law, Dartmouth, MA

Juris Doctor Candidate (2022) | GPA 3.56 | Rank: Top 15%

- Journal Experience: UMass Law Review, Business Editor (2021-2022), UMass Law Review, Associate Editor (2020- 2021)
 - Note: *McGirt* and the Fight for Tribal Self-Governance
- Awards: Public Interest Law Fellow, Michael Dukakis Public Service Award (Summer 2021)
- Activities: Legal Association of Women, Delta Theta Phi International Law Student Association

University of Baltimore, Baltimore, MD

Master of Arts in Legal & Ethical Studies (2017)

University of Maryland Global Campus, Adelphi, MD

Bachelor of Science in Psychology (2015)

Legal Experience

Summer Judicial Intern (05/2021 to present)

Chambers for Judge O. Rogerie Thompson, U.S. Court of Appeals for the First Circuit | Providence, RI

- Duties include: writing bench memoranda, summarizing and analyzing the legal issues raised in appeals which are calendared for monthly slates of oral arguments, perform record and law citation checks for draft opinions, complete discrete research assignments, and attend oral arguments.

Legal Intern (01/2021 to 04/2021)

U.S. Department of Justice, Civil Rights Division, Special Litigation Section | Washington, DC

- Participate in investigations of state run facilities to protect the rights of people in state or local institutions, including: jails, prisons, juvenile detention facilities, and health care facilities for persons with disabilities
- Assist in conducting investigations, preliminary inquiries, and monitoring compliance of agreements. Conduct legal and factual research, participating in case strategy sessions, and drafting memoranda, motions, and reports.

Graduate Teaching Assistant, Civil Procedure (08/2020 to 04/2021)

University of Massachusetts School of Law, Professor Justine Dunlap | Dartmouth, MA

- Teaching Assistant for civil procedure for all day-time first-year law students
- Conduct weekly reviews of course materials, aid 1L students understanding the concepts of the federal rules of civil procedure, one-on-one course assistance with students
- Assist Professor in technical support during remote class

Academic Fellow (08/2020 to 04/2021)

University of Massachusetts School of Law, Law Learning Center | Dartmouth, MA

- Peer mentor program which provides academic support to the incoming 1L class.

Summer Judicial Intern (05/2020 to 09/2020)

Chambers for Chief Judge John J. McConnell at U.S. District Court, District of Rhode Island | Providence, RI

- Participation in court processes including motions hearings, sentencings, settlement conferences, and Rule 16 conferences
- Review pleadings and sentencing documents. Conduct legal research on cases before court and produce draft memoranda.

Other Professional Experience

Administrative Manager (09/2018 to 08/2019)

Johns Hopkins University, Office of the Dean of Student Life | Baltimore, Maryland

- Strategic planning and leadership of fiscal and administrative operations for 18 departments under the Dean of Student Life.
- Development & administration of five-year budgets in excess of \$30 million. Creation of internal controls to reduce spending.
- Reorganized and led team of 8 including formulation of structured workflows, delegation of duties, streamlined processing, reduced inefficiencies, and implementation of best practices.

Adjunct Faculty (08/2018 to 05/2019)

Baltimore City Community College | Baltimore, Maryland

- Adjunct faculty for Pre-100 Preparation for Academic Success course - orientation to college course for new college students

Operations Manager (08/2017 to 09/2018)

Towson University, Chemistry Department | Towson, Maryland

- Management of all departmental budgeting and purchasing. Management of funds in excess of \$3 million.
- Served as department subject matter expert on procurement and fiscal policies and procedures.

Assistant Director of Budget Administration (04/2016 to 08/2017)

University of Maryland Global Campus, Office of Institutional Advancement | Adelphi, Maryland

- Administration of all 263 institutional endowment accounts and management of 3 departmental budgets
- Included management of state funds in excess of \$6 million and endowed funds of \$168 million.
- Served as institutional subject matter expert and liaison on all endowment and foundation spending policies.

Chair, Global Staff Advisory Council (04/2014 to 08/2017)

University of Maryland Global Campus, Staff Council Service | Adelphi, Maryland

- Elected positions held within shared governance while working for University of Maryland Global Campus, serving as representative of staff not otherwise represented by collective bargaining or University executive leadership.
- Advised and made recommendations to University President & VP of Human Resources on matters concerning employee retention and institutional practices. Served as institutional contact as staff representative including during accreditation review.

Assistant Director of Administration & Budget (11/2012 to 04/2016)

University of Maryland Global Campus, Office of Student Accounts | Largo, Maryland

- Oversight of all administrative and fiscal functions of 3 departments. Led administrative team of 3 to provide support to 93 staff.
- Served as department subject matter expert on policies and procedures related to budgeting & fiscal policy, information technology, facilities, and human resources. Included management of state funds in excess of \$7 million.
- Created procedures for recruitment of new employees including writing job descriptions and implementing interview procedures.

Volunteering Experience

Peer Mentor (08/2010 to present)

Imerman Angels and Leukemia & Lymphoma Society | Baltimore, Maryland

- Provide peer mentoring to young adults going through cancer treatments.
- Work with young adults just after cancer diagnosis to provide mentorship and support related to diagnosis, treatment, and survivorship concerns.

Youth Mentor (04/2017 to 07/2018)

Catholic Charities, Therapeutic Mentor Program | Baltimore, Maryland

- Weekly mentor program which offered one-to-one, strength-based relationships for youth.
- Activities focused on the importance of education and self-empowerment.

Reading Tutor (01/2017 to 05/2017)

Reading Partners.org | Baltimore, Maryland

- Tutor and mentor elementary students at Historic Samuel Coleridge-Taylor Elementary School in the area of literacy.

Volunteer & Fundraiser (11/2009 to 05/2018)

Ulman Foundation | Baltimore, Maryland

- Served as a volunteer in mentor program to young adults, large fundraising event planning committee, and logistical support.
- Volunteer and fundraiser for Key to Keys program in 2015 and 2018. Fundraising estimates to date: \$5,500

Personal Interests

- Have lived in 5 states
- Enjoy world travel, road trips, hiking, and baking

Unofficial

Page 1 of 2

Name: Alyssa Petroff

Student ID: 01869781

University of Massachusetts Dartmouth
285 Old Westport Road
N Dartmouth, MA 027472356

Print Date: 06/01/2021

----- Beginning of Law Record -----

2019 Fall

Program: Law
Plan: Law Program of Study

Course	Description	Attempted	Earned	Grade	Points
LAW 500	Academic Skills Lab	0.00	0.00	P	0.000
LAW 510	Legal Skills I	3.00	3.00	B	9.000
LAW 515	Torts I	3.00	3.00	A	12.000
LAW 530	Property I	3.00	3.00	A-	11.100
LAW 540	Contracts I	3.00	3.00	A	12.000
LAW 545	Civil Procedure I	3.00	3.00	A	12.000
		<u>Attempted</u>	<u>Earned</u>	<u>GPA</u>	<u>Points</u>
				<u>Units</u>	
Term GPA:	3.740 Term Totals:	15.00	15.00	15.00	56.100
Cum GPA:	3.740 Cum Totals:	15.00	15.00	15.00	56.100

2020 Sprng

Program: Law
Plan: Law Program of Study

Course	Description	Attempted	Earned	Grade	Points
LAW 511	Legal Skills II	3.00	3.00	P	0.000
LAW 516	Torts II	3.00	3.00	P	0.000
LAW 531	Property II	3.00	3.00	P	0.000
LAW 541	Contracts II	3.00	3.00	P	0.000
LAW 546	Civil Procedure II	3.00	3.00	P	0.000
		<u>Attempted</u>	<u>Earned</u>	<u>GPA</u>	<u>Points</u>
				<u>Units</u>	
Term GPA:	0.000 Term Totals:	15.00	15.00	0.00	0.000
Cum GPA:	3.740 Cum Totals:	30.00	30.00	15.00	56.100

2020 Summr

Program: Law
Plan: Law Program of Study

Course	Description	Attempted	Earned	Grade	Points
LAW 525	Professional Responsibility	3.00	3.00	B+	9.900
LAW 585	Business Organizations	3.00	3.00	B+	9.900

Term GPA:	3.300 Term Totals:	6.00	6.00	6.00	19.800
Cum GPA:	3.614 Cum Totals:	36.00	36.00	21.00	75.900

2020 Fall

Program: Law
Plan: Law Program of Study

Course	Description	Attempted	Earned	Grade	Points
LAW 512	Legal Skills III	3.00	3.00	A	12.000
LAW 520	Criminal Law	3.00	3.00	B-	8.100
LAW 555	Constitutional Law I	3.00	3.00	B-	8.100
LAW 629	Appellate Advocacy	3.00	3.00	A	12.000
LAW 696	Law Review Note Writing	2.00	2.00	P	0.000

Term GPA:	3.350 Term Totals:	14.00	14.00	12.00	40.200
Cum GPA:	3.518 Cum Totals:	50.00	50.00	33.00	116.100

2021 Sprng

Program: Law
Plan: Law Program of Study

Course	Description	Attempted	Earned	Grade	Points
LAW 521	Criminal Procedure	3.00	3.00	B+	9.900
LAW 556	Constitutional Law II	3.00	3.00	A	12.000
LAW 576	Evidence	3.00	3.00	B+	9.900
LAW 588	Comparative Law	3.00	3.00	A-	11.100
LAW 639	Field Placement	3.00	3.00	A	12.000

Term GPA:	3.660 Term Totals:	15.00	15.00	15.00	54.900
Cum GPA:	3.563 Cum Totals:	65.00	65.00	48.00	171.000

Unofficial

Page 2 of 2

Name: Alyssa Petroff

Student ID: 01869781

University of Massachusetts Dartmouth
285 Old Westport Road
N Dartmouth, MA 027472356

2021 Summr

Program: Law
Plan: Law Program of Study

<u>Course</u>	<u>Description</u>	<u>Attempted</u>	<u>Earned</u>	<u>Grade</u>	<u>Points</u>
LAW 665	International Law	3.00	0.00		0.000
LAW 680	Race, Racism & American Law	3.00	0.00		0.000
		<u>Attempted</u>	<u>Earned</u>	<u>GPA</u>	<u>Points</u>
				<u>Units</u>	
Term GPA:	0.000 Term Totals:	6.00	0.00	0.00	0.000
Cum GPA:	3.563 Cum Totals:	71.00	65.00	48.00	171.000

2021 Fall

Program: Law
Plan: Law Program of Study

<u>Course</u>	<u>Description</u>	<u>Attempted</u>	<u>Earned</u>	<u>Grade</u>	<u>Points</u>
LAW 560	Administrative Law	3.00	0.00		0.000
LAW 563	Access to Justice	3.00	0.00		0.000
LAW 603	Freedom of Information Law	3.00	0.00		0.000
LAW 697	Law Review I	2.00	0.00		0.000
LAW 716	Introduction to Islamic Law	3.00	0.00		0.000
		<u>Attempted</u>	<u>Earned</u>	<u>GPA</u>	<u>Points</u>
				<u>Units</u>	
Term GPA:	0.000 Term Totals:	14.00	0.00	0.00	0.000
Cum GPA:	3.563 Cum Totals:	85.00	65.00	48.00	171.000

Law Career Totals

		<u>Attempted</u>	<u>Earned</u>	<u>GPA</u>	<u>Points</u>
				<u>Units</u>	
Cum GPA:	3.563 Cum Totals:	85.00	65.00	48.00	171.000

End of Unofficial

June 25, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am writing to recommend Ms. Alyssa Petroff for a clerkship position in your chambers. In her last two years here at UMass Law, Alyssa has been a student in my Contracts I and II courses, as well as my upper-level course on scholarly legal writing. She has been a stellar student and is a thoughtful, energetic individual. Her excellent work in my classes have not been difficult to gleam. She earned an A in Fall 2019 when letter grades were given in Contracts I and she received a "Pass" the following semester in Contracts II when only pass/fall grades were permitted due to COVID-19 grading policies. In examining her answers from that semester, she likely would have again received a score at the top of the class. I appreciate this opportunity here to share my impressions of her beyond her course grades.

Alyssa is an insightful legal thinker. In my classes, she often demonstrated an acute ability to respond swiftly to difficult questions about the law, and she contributed frequently to a variety of discussions the course covered—whether we were discussing policy issues, difficult case law, or an application of law to facts. In other words, Alyssa demonstrated a flexible engagement with the law that showed that she could see the forest for the trees and vice versa when it came to understanding law and policy.

Additionally, Alyssa has demonstrated her critical thinking skills in her service and extracurricular activities, making her a standout example from her classmates as well. Last fall, she wrote a paper both as part of her candidacy for the UMass Law Review and as the final research project in my Law Review Note Writing class. Alyssa's paper, titled, "McGirt and the Fight for Tribal Self-Governance," analyzed the very recent Supreme Court decision *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), and the decision's jurisdictional impact on state criminal prosecutions of members of the Muscogee Creek tribe. Not only did Alyssa deftly sift through the muddy jurisdictional issues of state, federal, and tribal criminal actions on tribal lands in her paper, but she proposed interesting solutions to iron out the complications emanating from *McGirt*—solutions that prompted her either to extrapolate from interesting historical judicial approaches or to argue post-McGirt for the ability of indigenous people to self-govern when crimes are committed on indigenous lands and involve intra-tribal parties. As faculty advisor of the UMass Law Review and the instructor for the upper-level course, I found that her paper was one of stronger and more impressionable pieces that I had read last fall.

Next year, Alyssa will serve on the editorial board of the UMass Law Review as the next Business Editor. In her duties, she will attend to the financial health of the publication as well as organize conferences and symposia throughout the year. Already in preparation for her role, she has taken up initiative to arrange for events in the fall and has used her working background in student affairs at John Hopkins University to familiarize herself with the budgeting matters of the Law Review. She has demonstrated to me that she is a self-starter and will bring her maturity to the operations of the publication. Both her paper and her upcoming role on Law Review exemplify what Alyssa has been able to accomplish as a law student and legal thinker. I believe a clerkship position would fit well with her range and potential beyond the academy.

Alyssa also has a tremendous, non-stop work ethic, and takes much dedication and pride to whatever task she is handling. From all of what I have observed from my time with Alyssa, I believe she would work and thrive very well within judicial chambers. Please do not hesitate to contact me if you have any questions regarding Alyssa. I would be happy to clarify or add to my recommendations.

Sincerely,

Jeremiah Ho

Associate Professor of Law

University of Massachusetts School of Law

Jeremiah Ho - jho@umassd.edu



May 17, 2021

Re: Letter of Recommendation for Alyssa Petroff

To Whom It May Concern:

I write to highly recommend Alyssa Petroff for a clerkship. During the academic year 2019-2020, Ms. Petroff was a student in my Civil Procedure I and II courses. She performed extremely well in the class, in both class participation and exam-taking. This was especially true given the rapid spring 2020 switch to remote learning.

I solicited Ms. Petroff to be my Civil Procedure teaching assistant during this academic school year. I did this because of the intelligence, diligence, and ease of working with others that she demonstrated during the first year class. My knowledge of Ms. Petroff provides me with a strong basis on which to make my recommendation.

Ms. Petroff has been a stellar teaching assistant. She is very skilled at explaining the material to students. They appreciate her availability and accessibility, as well as her advice on how to take and excel at my exams. Her T.A. responsibilities also have showcased her technological talent which has been helpful during continued remoted learning.

In addition, I was the faculty advisor for Ms. Petroff's law review note. Ms. Petroff started off as a strong writer. That said, I witnessed her improvement in legal writing, analysis, and organization throughout the semester that she worked on the note.

In sum, Ms. Petroff has all the attributes to make a strong clerk. Any chambers would benefit from having her.

Please feel free to contact if I can provide any more information.

Respectfully submitted,

Justine A. Dunlap
Professor of Law

Pursue Justice

333 Faunce Corner Road, Dartmouth, MA 02747-1252
508.985.1158 • jdunlap@umassd.edu



UNITED STATES DISTRICT COURT
District of Rhode Island

Chief Judge John J. McConnell, Jr.

May 5, 2021

Re: Alyssa Petroff

Dear Sir/Madam:

I write to recommend Alyssa Petroff for a federal court law clerk position. Alyssa interned in my chambers during the summer of 2020, and we have remained in touch since that time.

Alyssa is an exceptional person and a very talented law student. Having had a career before entering law school, she has professional skills and judgment that many law students do not. I think her life experiences combined with her academic talents and love of the law make her an ideal law clerk candidate.

During Alyssa's summer, she worked on numerous projects and participated in remote chambers discussions. With the entire court working remotely, it was not a typical summer experience, but Alyssa made the most of her opportunities. She worked on several cases, drafting memos and orders. Although she only had completed only one year of law school, Alyssa was able to identify the critical issues and conduct the relevant research. She took feedback on each assignment and ran with it, always interested in learning and ensuring that her work was factually and legally supported. Her work product was always consistent, timely, and thorough.

When you meet her, you will immediately recognize Alyssa's warm and wonderful personality. Despite the limitations of a remote work environment, she collaborated with me, my law clerks, and her fellow interns, establishing a collegial rapport with everyone in chambers, regardless of age or life experience. She demonstrated high ethical standards and was always professional. I think these attributes will suit her well in any courthouse in the country.

One Exchange Terrace • Federal Building and Courthouse • Providence, RI 02903 • Tel: (401) 752-7200 • Fax: (401) 752-7247

May 5, 2021
Page 2
Re: Alyssa Petroff

Based on my experience getting to know Alyssa and working with her, I highly recommend her to you and ask that you consider her law clerk application. Please do not hesitate to contact me if you have any questions.

Best Regards,

A handwritten signature in blue ink, reading "John J. McConnell, Jr." with a stylized, cursive script.

John J. McConnell, Jr.
Chief Judge, United States District Court

Alyssa M. Petroff

163 Winter Street Apt 2 | Fall River, MA
480.678.1636 | apetroff@umassd.edu

Dear Reader:

The following writing sample is a draft order motion to dismiss I wrote during my summer 2020 internship. The piece has been edited by others for formatting and confidentiality. I have further edited the piece for length, specifically the facts section has been removed as well as the analysis for Count 3.

- Alyssa Petroff

DRAFT Order Motion to Dismiss

This dispute arises from an adverse employment action taken by the Town of Morton and its School Committee (collectively “the Town”) against Plaintiff Stephanie Thomas, a Morton special education teacher, and president of the teachers’ union, Local 251 of the National Education Association Rhode Island. Ms. Thomas and NEA Morton Local 251/NEARI/NEA (the “Union” and together with Ms. Thomas, the “Plaintiffs”) sue the Defendants asserting First Amendment Retaliation for Freedom of Speech (Count 1), First Amendment Retaliation for Freedom of Association (Count 2), and violations of Rhode Island’s Open Meetings Act, R.I. Gen. Laws §42-46-1 *et seq.* (Count 3). ECF No. 15 at 10-13.¹ The Defendants move to dismiss all three counts under Fed. R. Civ. P. 12(b)(6). ECF No. 18.

Standard of Review

The Federal Rules of Civil Procedure require an amended complaint to set forth “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed.R.Civ.P 8(a)(2). The complaint must contain sufficient factual allegations that plausibly state a claim upon

¹ Ms. Thomas did not bring labor law retaliation claims.

which relief can be granted. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570. This standard requires more than a recitation of elements and must allow the Court to draw a reasonable inference that a defendant is liable. *Ashcroft v. Iqbal*, 556 U.S. 662, 675. The Court must accept a plaintiff's allegations as true and construe them in the light most favorable to the plaintiff. *Gargano v. Liberty Int'l Underwriters*, 572 F.3d 45, 48 (1st Cir. 2009).

Discussion

First Amendment Retaliation for Freedom Speech (Count I)

To decide whether a public employee was retaliated against for protected speech in violation of her First Amendment rights, the Court should weight three factors. *Decottis v. Whittemore*, 635 F.3d 22, 29-30 (1st Cir. 2011). “First, the Court must determine ‘whether the employee spoke as a citizen addressing matters of public concern.’” *Id* at 29. (quoting *Curran v. Cousins*, 509 F.3d 36, 44 (1st Cir. 2007)). Second, the Court must “balance... the interests of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the [Town], as an employer, in promoting the efficiency of the public services it performs through its employees.” *Curran*, 509 F.3d at 44. (quoting *Pickering v. Bd of Educ.*, 391 U.S. 563, 568, 88 S.Ct. 1731, 20 L.Ed.2d 811 (1968)). And “third, the employee must ‘show that the protected expression was a substantial or motivating factor in the adverse employment decision.’” *Id.* at 45.

1. Spoke as a Citizen Addressing Matters of Public Concern

A public employee speaking pursuant to their official duties is not speaking as a private citizen and such speech does not insulate their communication from an adverse employment

action. *Garcetti v. Ceballos*, 547 U.S. 410, 421, 126 S.Ct. 1951, 164 L.Ed.2d. 689 (2006). In *Decottis*, the First Circuit listed the following nonexclusive factors as instructive when determining whether speech was made pursuant to official duties. “First, the Court must determine ‘whether the employee spoke as a citizen addressing matters of public concern.’” *Id* at 29. (quoting *Curran v. Cousins*, 509 F.3d 36, 44 (1st Cir. 2007)). Second, the Court must “balance... the interests of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the [Town], as an employer, in promoting the efficiency of the public services it performs through its employees.” *Decottis*, 635 F.3d at 32.

Several of these factors favor Plaintiff’s claim that Ms. Thomas’s speech was made as a private citizen. Ms. Thomas was not paid to make the speech at issue, and no observer would have the impression that her speech represented her employer. Defendants point to other factors such as Ms. Thomas making her speech up the chain of command which is not analogous within citizen speech. However, Ms. Thomas’s interactions with Supt. Sullivan was not pursuant to her official duties as a public school teacher or a Morton school district employee. It is in fact clear from the justification Morton provided for Ms. Thomas’s termination she was terminated for trying to engage with Supt. Sullivan in her role as Union President.

Ms. Thomas was attempting to engage Supt. Sullivan in a conversation about how the pandemic would affect her union members and to ensure the Union’s voice was included in any potential plan. The pandemic and a potential move to distance learning would have an exceptional impact on the teaching and the ability of individual teachers to carry out their duties.

This shift from in-person learning to an abrupt plan for remote learning is clearly a matter of great public concern.

. Ms. Thomas was not speaking in her capacity as a school teacher or district employee. In fact, with the instances the Town provided for Ms. Thomas's termination, it is clear Ms. Thomas was attempting to engage with Supt. Sullivan in her capacity as Union President. The two instances in which Ms. Thomas made these attempts were November 12, 2019 and November 18, 2019. ECF No. 15, pg. 5. In each instance, Ms. Thomas addressed her comments to Supt. Sullivan and requested that the Union participate and provide input as the changes would have an impact on teachers. The speech Ms. Thomas made was in her capacity as a private citizen and not in her official capacity as a school teacher for the District.

2. *Balancing the interests*

Having found that Ms. Thomas has plead sufficient facts to show she was speaking as a private citizen on a matter of public concern, next there must be a balancing of the interests Ms. Thomas and the interest of the Town. When acting in the role of employer, [the Town] has broader discretion to restrict speech on its employees but such restrictions "must be directed at speech that has some potential effect to the entity's operation." *Garcetti* 547 U.S. at 418. Adverse employment actions for a public employee's "protected speech offends the constitution [because] it threatens to inhibit exercise of the protected right, and... the First Amendment prohibits government officials from subjecting an individual to retaliatory actions... for speaking out. *Mercado-Berrios v. Cancel-Algeria*, 611 F.3d 18, 25 (1st Cir. 2010) (quoting *Hartman v. Moore*, 547 U.S. 250, 256, 126 S.Ct. 1695, 164 L.Ed.2d 441 (2006)). The Town argues that Ms.

Thomas was terminated due to insubordination which stemmed from her attempts to engage in discussions about the District's pandemic response. However, there is no doubt the distance learning plans were of great public concern and that Ms. Thomas was attempting to involve the Union in such planning. The Town's attempt to restrict Ms. Thomas's speech by terminating her employment cannot be said to outweigh the importance of allowing a twenty-year veteran teacher and Union President to attempt to participate in discussions about how a teacher's fundamental job would change due to distance learning. The interests of Ms. Thomas engaging in this sort of activity outweighs the District's interest as an employer and their ability to restrict Ms. Thomas's speech.

3. Protected Expression was a Substantial Motivating Factor

Finally, Ms. Thomas must show her protected speech was a "substantial or motivating factor in the adverse employment decision." *Curran* at 45. The Court finds Plaintiffs have alleged sufficient facts to show Ms. Thomas's termination was a result of her protected speech. In the revised letter Supt. Sullivan sent to Ms. Thomas notifying her of his recommendation for her suspension and termination, five reasons were provided. ECF No. 25-1 pg. 6. Two of the five reasons were specifically for Ms. Thomas's attempt to engage the District in union bargaining and discussion on the matter of distance learning; these include the interaction between Supt. Sullivan and Ms. Thomas at the meetings November 12 and November 18.

Another reason for Ms. Thomas's termination was that Mr. Sullivan had directed Ms. Thomas "to refrain from contact with Morton staff and the school community." ECF 25-1 pg 7. However, Ms. Thomas "directed... communications to a Facebook group numbering in the

thousands...” which contributed to the reasonings for termination. ECF 25-1 pg 7. The Facebook post made by Ms. Thomas was from her personal Facebook account to a public Morton Happenings public page. Ms. Thomas’s post, in its entirety reads: “You would be correct in your beliefs.” ECF 25-1 pg. 12. There is nothing in the record to indicate Ms. Thomas stated she was a public-school teacher or that she was responding on behalf of the school district, nor is there any indication that this post went out to the Morton staff or school community. The Facebook post was made wholly by a private citizen on a public that is available to anyone interested in keeping up-to-date on what is happening in Morton.

The Plaintiffs plead sufficient facts to show Ms. Thomas’s protected speech was a substantial factor in her termination.

First Amendment Retaliation for Association (Count II)

The Court finds the Plaintiffs have plead sufficient facts to make the First Amendment retaliation claim for association plausible. “The public employee surely can associate and speak freely and petition openly, and he is protected by the First Amendment from retaliation for doing so.” *Smith v. Arkansas State Highway Empl., Local 1315*, 441 U.S. 463, 465, 99 S.Ct. 1826, 60 L.Ed.2s 360 (1979). To prevail on a retaliation claim, Plaintiffs must show “retaliatory action sufficient to deter a person of ordinary firmness from exercising his constitutional rights and ... a link between the constitutionally protected conduct and the retaliatory action.” *Parlardy v. Township of Millburn*, 906 F.d 76, 84 (3d Cir. 2018) (quoting *Thomas v Independence Township*, 463 F.3d 285, 296 (3d Cir. 2006)). “[I]n instances where a government employee claims her employer has taken adverse action that is violative of associational rights[,]” Plaintiffs must also

show that the protected expression was a substantial or motivating factor in the employment decision. *Davignon v. Hodgson*, 524 F.3d 91, 108 (1st Cir. 2008).

Plaintiff's Complaint has many facts connecting Ms. Thomas's termination to her association with the Union. Two of the five reasons provided by Morton for Ms. Thomas's termination pointed to meetings where she attempted to engage Supt. Sullivan on collective bargaining with the Union. At several times, Ms. Thomas expressly identified speaking on behalf of the Union and rebuffed. Directly before the first meeting cited in reasons for her termination, when informing Ms. Thomas that he would not negotiate with her, Supt. Sullivan told her that she could go ahead and file a grievance. At the second meeting, Supt. Sullivan again refused negotiations and ordered Ms. Thomas to leave. Shortly afterwards, Supt. Sullivan placed Ms. Thomas on administrative leave, and directed Ms. Thomas to cease and desist all communications with the school community and a few weeks later, she was terminated from her position. Court finds that Plaintiff's have pled sufficient facts to show that Ms. Thomas's association with the Union was the cause of the retaliation by Morton when she was trying to exercise her freedom of association rights.

Applicant Details

First Name **Diane**
 Middle Initial **M**
 Last Name **Philips**
 Citizenship Status **U. S. Citizen**
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Address

Address
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City
Richmond
State/Territory
Virginia
Zip
23222
Country
United States

Contact Phone Number **8288085460**

Applicant Education

BA/BS From **University of North Carolina-Charlotte**
 Date of BA/BS **May 2017**
 JD/LLB From **University of Virginia School of Law**
<http://www.law.virginia.edu>
 Date of JD/LLB **May 11, 2020**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Virginia Law Review**
 Moot Court Experience **No**

Bar Admission

Admission(s) **Virginia**

Prior Judicial Experience

Judicial Internships/ Externships	No
Post-graduate Judicial Law Clerk	Yes

Specialized Work Experience

Recommenders

Lorish, Lisa
 Lisa_Lorish@fd.org
 Givens, Jennifer
 jenniferlgivens@law.virginia.edu
 (434) 924-2912

References

Professor Jennifer Givens
 Legal Director, Innocence Project Clinic at the University of Virginia
 School of Law
 (434) 924-2912, jenniferlgivens@law.virginia.edu

Professor Joe Fore
 Associate Professor and Co-Director of the Legal Research and
 Writing Program at the University of Virginia School of Law
 (434) 982-5507, jfore@law.virginia.edu

Lisa Lorish
 Assistant Public Defender, Public Defender for the Western District of
 Virginia
 Clinic Director, Criminal Defense Clinic at the University of Virginia
 School of Law
 (434) 220-3388, Lisa_Lorish@fd.org

The Honorable Justice William C. Mims
 Justice, Supreme Court of Virginia
 (804) 786-2256, wmims@vacourts.gov

**This applicant has certified that all data entered in this profile and
 any application documents are true and correct.**

Diane M. Philips
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April 12, 2021

The Honorable Elizabeth W. Hanes
Spottswood W. Robinson III & Robert R. Merhige Jr., U.S. Courthouse
701 East Broad Street, Suite 5318
Richmond, VA 23219

Dear Judge Hanes:

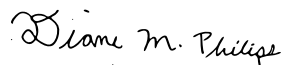
I am a 2020 graduate of the University of Virginia School of Law and current law clerk at the Supreme Court of Virginia, and I am writing to apply for a clerkship in your chambers beginning in August 2022. While in law school, I served on the executive board of the Virginia Law Review, and though UVA Law does not rank students, I believe I was well within the top third of my class.

I have found my clerkship at the Supreme Court of Virginia to be a rewarding experience that has allowed me to sharpen my legal research and writing skills and gain exposure to new areas of the law. Before beginning my career as a public defender, though, I am interested in gaining experience in the federal system by way of an additional clerkship. As such, a position in your chambers would be an excellent opportunity for me to learn about federal practice. Moreover, I would love to have the opportunity to build a mentorship relationship with a judge who has been a federal public defender. My husband and I have also enjoyed living in Richmond and hope to remain here for the foreseeable future.

I am enclosing my resume, my law school and undergraduate transcripts, and a writing sample. You will receive letters of recommendation from Professor Jennifer Givens and Assistant Federal Public Defender Lisa Lorish. You are also welcome to contact my other references, including the judge for whom I am currently clerking, The Honorable Justice William C. Mims.

Please let me know if I can provide any further information. Thank you for considering me for a clerkship in your chambers.

Sincerely,



Diane M. Philips

Diane M. Philips

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EDUCATION

University of Virginia School of Law, Charlottesville, VA

J.D., May 2020, 3.67 GPA

- Virginia Law Review, Executive Editor
- Virginia Law Legal Research and Writing Program, Legal Writing Fellow
- Virginia Law Prison Project, Director
- Criminal Defense Clinic, Student Attorney

University of North Carolina at Charlotte, Charlotte, NC

B.A., English Literature and Political Science, May 2017, 4.0 GPA

- Mock Trial, President
- Niner Times Student Newspaper, Copy Editor
- Writing Resources Center, Writing Tutor
- Judicial Board and Academic Integrity Board, Chair
- Award for Excellence in English Scholarship
- Dean of Students Leadership Medal
- Michael A. Pearson Award for Social Justice

EXPERIENCE

Supreme Court of Virginia, Richmond, VA

Judicial Law Clerk to the Honorable Justice William C. Mims, August 2020 – August 2022

- Prepared memoranda of law on cases on the court docket and cases the court was considering for a grant of certiorari
- Drafted opinions and orders in collaboration with the Justice

Virginia Law Innocence Project, Charlottesville, VA

Clinic Member and Team Leader, August 2017 – May 2020

- Led a team of five students in interviewing clients and witnesses and reviewing court records to collect information in support of a writ of actual innocence
- Conducted an investigation into misconduct by a former detective, interviewing more than forty former criminal defendants across the state of Virginia, that culminated in a successful petition for pardon

Mecklenburg County Public Defender's Office, Charlotte, NC

Legal Intern and McMillan Fellow, May – August 2019

- Represented indigent clients in bond hearings, pleas, and trials using a third-year practice certificate
- Prepared memoranda of law and drafted and argued a successful motion to suppress in superior court

Federal Public Defender for the Western District of Virginia, Charlottesville, VA

Legal Intern, January – May 2019

- Researched issues of constitutional and federal statutory law for a criminal appeal to the Fourth Circuit
- Drafted a petition for certiorari to the U.S. Supreme Court on the three-strike mandatory sentencing statute

Virginia Indigent Defense Commission, Staunton, VA

Legal Intern, May – August 2018

- Prepared memoranda of law on statutory and constitutional issues of law and drafted a successful writ of habeas corpus
- Conducted client intake and assisted public defenders in court, including drug court and the mental health therapeutic docket

Diane Michelle Philips

01/24/2021

Degrees Conferred

Confer Date: 05/17/2020
Degree: Juris Doctor
Major: Law

Beginning of Law Record

2017 Fall

School:	School of Law		
Major:	Law		
LAW	6000	Civil Procedure	A- 4.0
LAW	6002	Contracts	B+ 4.0
LAW	6003	Criminal Law	B+ 3.0
LAW	6004	Lgl Research & Writing (YR)	S 1.0
LAW	6007	Torts	B 4.0

2018 Spring

School:	School of Law		
Major:	Law		
LAW	6001	Constitutional Law	A- 4.0
LAW	6005	Lgl Research & Writing (YR)	S 1.0
LAW	6006	Property	B+ 4.0
LAW	6104	Evidence	A 4.0
LAW	7114	Native American Law	A- 3.0

2018 Fall

School:	School of Law		
Major:	Law		
LAW	7018	Criminal Adjudication	B+ 3.0
LAW	7072	Prof Resp/Public Interest Law	A 2.0
LAW	7106	Law of the Police	A 3.0
LAW	8628	Innocence Project Clinic (YR)	CR 4.0
LAW	9289	Juvenile Justice Seminar	B+ 3.0

2019 Spring

School:	School of Law		
Major:	Law		
LAW	7019	Criminal Investigation	A- 3.0
LAW	8003	Civil Rights Litigation	A 3.0
LAW	8505	Clinical Topics	A 3.0
Course Topic:	Innocence Project Clinic		
LAW	8629	Innocence Project Clinic (YR)	A 4.0

2019 Fall

School:	School of Law		
Major:	Law		
LAW	7042	Immigration Law	A+ 2.0
LAW	7062	Legislation	A 3.0
LAW	8608	Criminal Defense Clinic	A- 5.0
LAW	8800	Legal Writing Fellow (YR)	CR 2.0
LAW	9089	Seminar in Ethical Values (YR)	YR 0.0

2020 Spring

School:	School of Law		
Major:	Law		
LAW	7022	Employment Discrimination	CR 3.0
LAW	7178	Feminist Jurisprudence	CR 3.0
LAW	8801	Legal Writing Fellow (YR)	CR 1.0
LAW	9090	Seminar in Ethical Values (YR)	CR 1.0
LAW	9241	Death Penalty	CR 3.0
LAW	9252	Poverty in Law/Lit/Culture	CR 3.0

End of Law School Record